TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. ~~152~~ 9.

THE ATLANTIC COAST LINE RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

THE STATE OF FLORIDA UPON THE RELATION OF W. H. ELLIS, AS ATTORNEY GENERAL OF SAID STATE, AND J. M. BARRS, AS SPECIAL COUNSEL FOR JEFFERSON B. BROWNE ET AL., RAILROAD COMMISSIONERS OF SAID STATE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

FILED JANUARY 3, 1905.

(19,584.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOV. 14, 1905.

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1 STATE OF FLORIDA:

In the Supreme Court.

Be it remembered that heretofore, to-wit: on the 7th day of March, 1904, the same being a day within the January term, 1904 of the supreme court of the State of Florida, The State of Florida *ex rel.* W. H. Ellis as attorney-general of said State, and J. M. Barrs as special counsel for the railroad commissioners of the State of Florida, by its attorneys filed in the office of the clerk of the supreme court of the State of Florida its petition for an alternative writ of mandamus, which said petition is in the words and figures following, to-wit:

In the Supreme Court of the State of Florida, January Term, 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of said State, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of the State of Florida,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation.

To the Honorable R. Fenwick Taylor, chief justice, and the justices of said court:

W. H. Ellis as attorney general of the State of Florida, and J. M. Barrs as special counsel for the railroad commissioners of said State, upon the order of said railroad commissioners, and in the name of the State of Florida, respectfully show unto and inform your honors:

2 1. That the Atlantic Coast Line Railroad Company is a corporation doing business in the State of Florida, and now controls and operates, and since the 8th day of October, A. D. 1903, has controlled and operated divers lines of railroads, which are wholly or in part within the State of Florida, and that the said Atlantic Coast Line Railroad Company is now, and since the 8th day of October, 1903, has been a common carrier, engaged in the transportation of freight and passengers for hire over its said lines of railroads from points in Florida to points in Florida.

2. That on the 8th day of October, A. D. 1903, the railroad commissioners of the State of Florida, in session at their office in Tallahassee, Florida, by an order duly adopted by them, gave notice in accordance with the laws of Florida to all the railroad companies and common carriers doing business wholly or in part within the State of Florida, that there would be a meeting of said railroad commissioners at their office in the city of Tallahassee, Florida, on the 16th day of November, 1903, at 9:00 o'clock a. m. when they proposed to adopt

a freight rate of one cent per ton per mile on phosphate from points within the State of Florida to points within the State of Florida, except to such points where the proposed rate would raise the rates then in force, and that to such points the rates then in force should remain the same, at which time the railroad companies and common carriers doing business wholly or in part within the State of Florida would have an opportunity to be heard, and to show cause, if any they had, why the proposed rates should not be adopted.

3. That thereafter the said railroad commissioners, with the consent of said railroad companies and common carriers, changed the place of meeting from Tallahassee, Florida, to Jacksonville, Florida, of which change all the railroad companies and common carriers doing business wholly or in part within the State of Florida were duly notified.

3 4. That, in accordance with said notice, the said railroad commissioners met at the board of trade rooms in the city of Jacksonville, Florida, on the 16th day of November, A. D. 1903, at which time and place said railroads and common carriers were given an opportunity to be heard, and answers were then and there filed by the said Atlantic Coast Line Railroad Company, the Seaboard Air Line railway and the Jacksonville and Southwestern railroad, and request was made by them that they, and each of them, be given until November 28th, 1903, in which to file their briefs and supplemental briefs, which request was granted, and the briefs of each of said railroad companies having been received by the said commissioners and having been duly considered by them in connection with the proposed reduction in phosphate rates, and the said commissioners, on the 17th day of December, A. D. 1903, in session at their office in Tallahassee, Florida, being satisfied that some of the then present freight rates on phosphate from points in Florida to points within the State of Florida were unreasonably high and should be reduced and based upon a mileage rate, ordered that the rate to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida for the transportation of phosphate from points in the State of Florida to points within said State should not exceed one cent per ton per mile, provided, however, that where the rate of one cent per ton per mile would raise any rate then in operation, that said rate of one cent per ton per mile should not be effective, but that the rate as then charged by the said railroad companies was then and there adopted in and by said order of the said railroad commissioners as their rate between such points.

4*a*. That the said commissioners, in and by their said order then and there further ordered that where a shipment of phosphate should pass over two or more railroads in reaching its destination within the State of Florida, the initial line might charge one and a half cents per ton per mile for the first ten miles, which said phosphate should be hauled.

4 5. That the said railroad commissioners, in and by their said order, then and there further ordered that where a shipment of phosphate from points in Florida to points in Florida should pass over two or more roads in reaching its destination within the State of Florida, that the provisions of rule 19 governing joint rates are thereby modified so that the initial road should have the right to deliver shipments to the delivering road at such junctional points within the State of Florida that it should desire, provided, however, that the rate charged for such shipment should be based upon the shortest mileage between the point of shipment and the point of destination.

6. That the said railroad commissioners, in and by their said order, then and there further ordered that the said rate therein prescribed should be effective on and after the 15th day of January, A. D. 1904.

A duly certified copy of the said order and the said rule 19 are hereto attached, marked "Exhibit A," and "Exhibit B," respectively, and made a part hereof to the same extent as if fully set out herein.

7. That the said railroad commissioners, prior to the 15th day of January, A. D. 1904, furnished all railroads doing business within said State with notice of the changes and revisions adopted in and by said order, which said notice stated the time when said changes and revisions should go into effect.

8. That, although the said Atlantic Coast Line Railroad Company was furnished with notice of the changes and revisions of phosphate rates, as aforesaid, it has not obeyed said order, and has not put into effect the schedule of rates prescribed in and by said order, but refuses so to do, and in violation and disregard of the rate prescribed in and by said order, and contrary to the laws of Florida, now charges, and since the 15th of January, 1904, has charged for the transportation of phosphate over its said lines of railroads and railroads under its control or management from points in Florida to points in Florida rates in excess of the rates prescribed in
5 and by said order, and the said Atlantic Coast Line Railroad Company has refused, and still refuses, to otherwise comply with all and singular the aforesaid and other commands and directions of the said order of the said railroad commissioners, made on the 17th day of December, A. D. 1903.

9. That your petitioners further show unto and inform your honors that the said railroad commissioners, constituting the railroad commissioners of the State of Florida, and the people of the State of Florida, are entirely without remedy in the premises, unless it be afforded by the interposition of this honorable court through a writ of mandamus.

Wherefore, your petitioners pray that a writ of mandamus may be issued by this court, directed to the said Atlantic Coast Line Railroad Company, commanding it, the said Atlantic Coast Line Railroad Company, to forthwith put into operation and effect over all

its lines of railroads, and all the railroads which are under its management or control, which are wholly or in part within the State of Florida, the rate prescribed in and by said order of the said railroad commissioners, on the 17th day of December, A. D. 1903, to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida for the transportation of phosphate from points in the State of Florida to points within the said State, and commanding the said Atlantic Coast Line Railroad Company to further comply with all the commands and directions of said order of the said railroad commissioners, as contained in a duly certified copy of said order which is hereto attached and marked "Exhibit A" and made a part thereof to the same extent as is fully set out herein, and to continue to comply with all the commands and directions of said order as long as the same shall be in force; and that such other and further orders may be made in the premises as to your honors shall seem meet and as justice may require, etc., and as in duty bound your petitioners will ever pray, etc.

W. H. ELLIS,
Attorney General of the State of Florida.
J. M. BARRS,
Special Counsel for the Railroad Commissioners
of the State of Florida.

6 STATE OF FLORIDA,
County of Leon.

Personally appeared before me R. Hudson Burr, to me well known, who, being first duly sworn, says that he is acting chairman of the railroad commissioners of the State of Florida; that he has read the foregoing petition, and knows the contents thereof, and that the matters and things therein contained are true.

R. HUDSON BURR.

Sworn to and subscribed before me, this 7th day of March, A. D. 1904.

[SEAL.]

B. B. WILSON,
Clerk Supreme Court.

EXHIBIT A.

Order No. 34.

Railroad Commission, State of Florida.

In the Matter of Freight Rate for the Transportation of Phosphate from Points in Florida to Points within the State of Florida.

Due notice having been given to all the railroads doing business wholly or in part within the State of Florida, that there would be a meeting of the railroad commissioners in the city of Jacksonville on

the 16th day of November, A. D. 1903, for the purpose of considering the adoption of a freight rate of one cent per ton per mile on phosphate shipped from points within the State of Florida to points within said State, except to such points where the proposed rate would raise the rate now in force to such points, at which time all railroad companies and common carriers would be given an
7 opportunity to be heard and show cause, if any they had, why the proposed rates should not be adopted;

In accordance therewith the commissioners met at the board of trade rooms in the city of Jacksonville on said 16th day of November, and the railroads were given an opportunity to be heard, and answers were filed by the Atlantic Coast Line R. R., Seaboard Air Line railway, and the Jacksonville & Southwestern Ry., and request made by them that they be given until Nov. 28th in which to file their briefs and supplemental briefs, which request was granted, and the briefs having been received by the commissioners, and duly considered by them in connection with the proposed reduction in the phosphate rate, and the commissioners being satisfied that some of the present freight rates on phosphate from points in the State of Florida to points within the State are unreasonably high, and should be reduced and based upon a mileage rate:

It is therefore ordered by the railroad commissioners of the State of Florida, that the rate to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida, for the transportation of phosphate from points in the State to points within the State, shall not exceed one cent per ton per mile.

Provided, however, that where the rate of one cent per ton per mile will raise any rate now in operation, that said rate of one cent per ton per mile shall not be effective, but the rate as now charged by the railroad companies is hereby adopted by the railroad commissioners as their rate between such points.

It is therefore ordered, that where a shipment of phosphate shall pass over two or more railroads in reaching its destination within the State of Florida, the initial line may charge one and a half cents per ton per mile for the first ten miles which said phosphate shall be hauled.

8 It is further ordered, that where phosphate from points in Florida passes over two or more roads in reaching its destination within the State of Florida, that the provisions of rule 19, governing joint rates is hereby modified, so that the initial road shall have the right to deliver the shipment to the delivering road at such junctional point within the State of Florida as it may desire.

Provided, however, that the rate charged for such shipment shall be based upon the shortest mileage between the point of shipment and the place of destination.

It is further ordered that this rate shall be effective on and after January 15, 1904.

Done and ordered by the railroad commissioners of the State of Florida, in session, at their office in the city of Tallahassee, Florida, this 17th day of December, A. D. 1903.

(S'd.) JEFFERSON B. BROWNE, Chairman.

Attest: R. C. DUNN, Secretary.

I, Hudson Burr, as acting chairman of the railroad commissioners of the State of Florida, do hereby certify that the above and foregoing is a full, true and correct copy of the order adopted by the railroad commissioners of the State of Florida, on the 17th day of December, A. D. 1903, in the matter of freight rate for the transportation of phosphate from points in Florida to points within the State of Florida, as the same appears upon the record of the proceedings of said commissioners.

Witness my hand, this 7th day of March, A. D. 1904.

R. HUDSON BURR,
Acting Chairman of the Railroad
Commissioners of the State of Florida.

9 EXHIBIT B.

Joint Rates Shall Be Sum of Locals.

19. On all shipments of freight not governed by rule No. 1 originating and terminating in this State, which shall pass over the whole of two or more roads not under the same control, the maximum rates charged on such shipments shall not be greater than the sum of the local rates on such freights for the distance hauled over each road. The total rate thus ascertained on such freights from the point of shipment to the point of destination shall be divided in such proportions between the roads over which such freights pass so as to give to each road interested in the shipment its local rate for the distance such shipment is hauled, conditioned upon the initial line delivering the traffic to the delivering road at its nearest junctional point. Nothing in this rule shall be construed to prevent the total of any joint rate made under this rule from being divided in such proportions between the roads interested in the same as they may agree upon, but a failure to so agree between the roads interested shall in no way affect the total joint rate to be charged and collected on, or work delay in the transportation of such freight, or be subject of appeal to the commission by the roads at interest; provided, however, that no railroad company shall discriminate between any other two or more railroad companies when the conditions and circumstances are practically the same.

I, R. Hudson Burr, as acting chairman of the railroad commissioners of the State of Florida, do hereby certify that the above and foregoing is a full, true and correct copy of Rule 19, governing joint rates, as prescribed by the railroad commissioners of the State of Florida, and as the same appears upon the record of the proceedings of the said railroad commissioners.

Witness my hand this 7th day of March, A. D. 1904.

R. HUDSON BURR,
Acting Chairman of the Railroad
Commissioners of the State of Florida.

10 And afterwards, to wit, on the 8th day of March, A. D. 1904, comes the plaintiff by its attorneys, and files the following motion for an alternate writ of mandamus, which motion is in the words and figures following, to-wit:

In the Supreme Court of Florida, January Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney-General of said State, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of the State of Florida,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation.

Come now the relators and present to the court a petition, and move the court that an alternative writ of mandamus do issue as prayed in said petition, returnable as the court may direct.

RAILROAD COMMISSIONERS OF
THE STATE OF FLORIDA,
W. H. ELLIS, Attorney-General,
J. M. BARRS, Special Counsel,
By W. H. ELLIS, Attorney-General.

And thereafter, on the same day, the supreme court made an order that an alternative writ of mandamus do issue herein directed to the respondent, which order is in the words and figures following, to-wit:

In Supreme Court of Florida, January Term, A. D. 1904.

11 THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS *et al.*
vs.
ATLANTIC COAST LINE RAILROAD COMPANY.

Upon consideration of the motion and petition herein, it is ordered that an alternative writ of mandamus do issue herein directed to the respondent, returnable on Tuesday, the 19th instant, in conformity to the said motion and petition filed.

And afterwards, on the 12th day of March, A. D. 1904, an alternative writ of mandamus was issued herein in the words and figures following, to-wit:

12 THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney-General of said State, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of the State of Florida,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation.

The State of Florida to the Atlantic Coast Line Railroad Company:

Whereas, by a petition caused by the railroad commissioners of the State of Florida to be filed in this court in the name of the State of Florida, by W. H. Ellis as attorney general of the State of Florida and J. M. Barrs as special counsel for the railroad commissioners of the State of Florida, it has been made to appear:

1. That the Atlantic Coast Line Railroad Company is a corporation doing business in the State of Florida, and now controls and operates, and since the 8th day of October, A. D. 1903, has controlled and operated divers lines of railroads, which are wholly or in part within the State of Florida, and that the said Atlantic Coast Line Railroad Company is now, and since the 8th day of October, 1903, has been a common carrier, engaged in the transportation of freight and passengers for hire over its said lines of railroads from points in Florida to points in Florida.

2. That on the 8th day of October, A. D. 1903, the railroad commissioners of the State of Florida, in session at their office in Tallahassee, Florida, by an order duly adopted by them, gave notice in accordance with the laws of Florida to all the railroad companies and common carriers doing business wholly or in part within the State of Florida, that there would be a meeting
13 of said railroad commissioners at their office in the city of Tallahassee, Florida, on the 16th day of November, 1903, at 9:00 o'clock a. m., when they proposed to adopt a freight rate of one cent per ton per mile on phosphate from points within the State of Florida to points within the State of Florida, except to such points where the proposed rate would raise the rates then in force, and that to such points the rates then in force should remain the same, at which time the railroad companies and common carriers doing business wholly or in part within the State of Florida would have an opportunity to be heard, and to show cause, if any they had, why the prospective rates should not be adopted.

3. That thereafter the said railroad commissioners, with the consent of said railroad companies and common carriers, changed the place of meeting from Tallahassee, Florida, to Jacksonville, Florida, of which change all the railroad companies and common carriers doing business wholly or in part within the State of Florida were duly notified.

4. That, in accordance with said notice, the said railroad commissioners met at the board of trade rooms in the city of Jacksonville, Florida, on the 16th day of November, A. D. 1903, at which time and place said railroads and common carriers were given an opportunity to be heard, and answers were then and there filed by the said Atlantic Coast Line Railroad Company, the Seaboard Air Line railway and the Jacksonville and Southwestern railroad, and request was made by them that they, and each of them, be given until November 28th, 1903, in which to file their briefs and supplemental briefs, which request was granted, and the briefs of each of said railroad companies having been received by the said commissioners, and having been duly considered by them in connection with the proposed reduction in phosphate rates, and the said commissioners, on the 17th day of December, A. D. 1903, in session at their office in Tallahassee, Florida, being satisfied that some of the then present freight rates on phosphate from points in Florida to points within the State of Florida were unreasonably high and should be
14 reduced and based upon a mileage rate, ordered that the rate to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida for the transportation of phosphate from points in the State of Florida to points within said State should not exceed one cent per ton per mile, provided, however, that where the rate of one cent per ton per mile would raise any rate then in operation, that said rate of one cent per ton per mile should not be effective, but that the rate as then charged by the said railroad companies was then and there adopted in and by said order of the said railroad commissioners as their rate between such points.

4*a*. That the said commissioners, in and by their said order, then and there further ordered that where a shipment of phosphate should pass over two or more railroads in reaching its destination within the State of Florida, the initial line might charge one and a half cents per ton per mile for the first ten miles which said phosphate should be hauled.

5. That the said railroad commissioners, in and by their said order, then and there further ordered that where a shipment of phosphate from points in Florida to points in Florida should pass over two or more roads in reaching its destination within the State of Florida, that the provisions of rule 19 governing joint rates are thereby modified so that the initial road should have the right to deliver shipments to the delivering road at such junctional point within the State of Florida that it should desire, provided, however, that the rate charged for such shipment should be based upon the shortest mileage between the point of shipment and the point of destination.

6. That the said railroad commissioners, in and by their said order, then and there further ordered that the said rate therein prescribed should be effective on and after the 15th day of January, A. D. 1904.

15 A duly certified copy of the said order and the said rule 19 are hereto attached, marked "Exhibit A" and "Exhibit B," respectively, and made a part hereof to the same extent as if fully set out herein.

7. That the said railroad commissioners, prior to the 15th day of January, A. D. 1904, furnished all railroads doing business within said State with notice of the changes and revisions adopted in and by said order, which said notice stated the time when said changes and revisions should go into effect.

8. That, although the Atlantic Coast Line Railroad Company was furnished with notice of the changes and revisions of phosphate rates, as aforesaid, it has not obeyed said order, and has not put into effect the schedule of rates prescribed in and by said order, but refuses so to do, and in violation and disregard of the rate prescribed in and by said order, and contrary to the laws of Florida, now charges, and since the 15th day of January, A. D. 1904, has charged for the transportation of phosphate over its said lines of railroads, and railroads under its control or management, from points in Florida to points in Florida, rates in excess of the rates prescribed in and by said order, and the said Atlantic Coast Line Railroad Company has refused, and still refuses, to otherwise comply with all and singular the aforesaid and other commands and directions of the said order of the said railroad commissioners, made on the 17th day of December, A. D. 1903.

9. That the said railroad commissioners, constituting the railroad commission of the State of Florida, and the people of the State of Florida, are entirely without remedy in the premises, unless it be afforded by the interposition of this honorable court through a writ of mandamus.

Now, therefore, we, being willing that full and speedy justice should be done in the premises, do command you, the Atlantic

16 Coast Line Railroad Company, to forthwith put into operation and effect over all your lines of railroads, and all the railroads which are under your management or control, which are wholly or in part within the State of Florida, the rate prescribed in and by said order of the said railroad commissioners on the 17th day of December, A. D. 1903, to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida for the transportation of phosphate from points in the State of Florida to points within said State, and do command you to further comply with all the commands and directions of said order of the said railroad commissioners, as contained in a duly certified copy of said order which is hereto attached and marked "Exhibit A" and made a part hereof to the same extent as if fully set out herein, and that you continue to comply with all the commands and directions of said order as long as the same shall be in force; or that you appear before the justices of our supreme court sitting within and for the State of Florida, at the court room in the city of Tallahassee, on the 29th day of March, 1904, at ten o'clock

a. m. of said day, and show cause why you refuse to do so, and have you then and there this writ.

Witness the Honorable R. F. Taylor, chief-justice of the supreme court of the State of Florida, and the seal of the said court, at Tallahassee, the capital, this 8th day of March, A. D. 1904.

[SEAL.] B. B. WILSON,
Clerk Supreme Court State of Florida.

EXHIBIT A.

Order No. 34.

Railroad Commission, State of Florida.

17 In the Matter of Freight Rate for the Transportation of Phosphate from Points in Florida to Points within the State of Florida.

Due notice having been given to all the railroads doing business wholly or in part within the State of Florida, that there would be a meeting of the railroad commissioners in the city of Jacksonville on the 16th day of November, A. D. 1903, for the purpose of considering the adoption of a freight rate of one cent per ton per mile on phosphate shipped from points within the State of Florida to points within said State, except to such points where the proposed rate would raise the rate in force to such points, at which time all railroad companies and common carriers would be given an opportunity to be heard and show cause, if any they had, why the proposed rates should not be adopted;

In accordance therewith the commissioners met at the board of trade rooms in the city of Jacksonville on said 16th day of November, and the railroads were given an opportunity to be heard, and answers were filed by the Atlantic Coast Line R. R., Seaboard Air Line railway, and the Jacksonville & Southwestern Ry., and request made by them that they be given until Nov. 28th in which to file their briefs and supplemental briefs, which request was granted, and the briefs having been received by the commissioners, and duly considered by them in connection with the proposed reduction in the phosphate rate, and the commissioners being satisfied that some of the present freight rates on phosphate from points in the State of Florida to points within the State are unreasonably high, and should be reduced and based upon a mileage rate:

It is therefore ordered by the railroad commissioners of the State of Florida, that the rate to be charged by all the railroads and common carriers doing business wholly or in part within the State of Floridal, for the transportation of phosphate from points in the State to points within the State, shall not exceed one cent per ton per mile.

18 Provided, however, that where the rate of one cent per ton per mile will raise any rate now in operation, that said rate of one cent per ton per mile shall not be effective, but the rate as now charged by the railroad companies is hereby adopted by the railroad commissioners as their rate between such points.

It is further ordered, that where a shipment of phosphate shall pass over two or more railroads in reaching its destination within the State of Florida, the initial line may charge one and a half cents per ton per mile for the first ten miles which said phosphate shall be hauled.

It is further ordered, that where phosphate from points in Florida, passes over two or more roads in reaching its destination within the State of Florida, that the provisions of rule 19, governing joint rates, is hereby modified so that the initial raod shall have the right to deliver the shipment to the delivering road at such junctional point within the State of Florida as it may desire.

Provided, however, that the rate charged for such shipment shall be based upon the shortest mileage between the point of shipment and the place of destination.

It is further ordered that this rate shall be effective on and after January 15, 1904.

Done and ordered by the railroad commissioners of the State of Florida, in session at their office in the city of Tallahassee, Florida, this 17th day of December, A. D. 1903.

(S'd) JEFFERSON B. BROWNE, Chairman.

Attest: R. C. DUNN, Secretary.

19 I, R. Hudson Burr, as acting chairman of the railroad commissioners of the State of Florida, do hereby certify that the above and foregoing is a full, true and correct copy of the order adopted by the railroad commissioners of the State of Florida, on the 17th day of December, A. D. 1903, in the matter of freight rate for the transportation of phosphate from points in Florida to points within the State of Florida, as the same appears upon the record of the proceedings of said commissioners.

Witness my hand this 7th day of March, A. D. 1904.

R. HUDSON BURR,
Acting Chairman of the Railroad Commissioners
of the State of Florida.

EXHIBIT B.

Joint Rates Shall be Sum of Locals.

19. On all shipments of freight not governed by rule No. 1, originating and terminating in this State, which shall pass over the whole of two or more roads not under the same control, the maximum rates charged on such shipments shall not be greater than

the sum of the local rates on such freights for the distance hauled over each road. The total rate thus ascertained on such freights from the point of shipment to the point of destination shall be divided in such proportions between the roads over which such freights pass so as to give to each road interested in the shipment its local rate for the distance such shipment is hauled, conditioned upon the initial line delivering the traffic to the delivering road at its nearest junctional point. Nothing in this rule shall be construed to prevent the total of any joint rate made under this rule from being divided in such proportions between the roads interested in the same as they may agree upon, but a failure to so agree between the roads interested shall in no way affect the total joint rate to be charged and collected on, or work delay in the transportation of such freight, or be subject of appeal to the commission by the roads at interest; provided, however, that no railroad company shall discriminate between any other two or more railroad companies when the conditions and circumstances are practically the same.

I, R. Hudson Burr, as acting chairman of the railroad commissioners of the State of Florida, do hereby certify that the above and foregoing is a full, true and correct copy of rule 19, governing joint rates, as prescribed by the railroad commissioners of the State of Florida, and as the same appears upon the record of the proceedings of the said railroad commissioners.

Witness my hand this 7th day of March, A. D. 1904.

R. HUDSON BURR,
Acting Chairman of the Railroad Commissioners
of the State of Florida.

This writ came to hand this March 11th, 1904, and in the absence of the president and vice president or other head of the corporation, the Atlantic Coast Line Railroad Company, and in the absence of the cashier & treasurer and secretary and general manager and any director of said Atlantic Coast Line Railroad Company, a corporation, this writ was served upon L. E. Spencer, a business agent of the said Atlantic Coast Line Railroad Company, by delivering a copy of said writ to the said L. E. Spencer, who is a resident of Duval county, Florida, on March 11th, 1904, in Duval county, Florida.

JOHN PRICE,
Sheriff of Duval County, Florida, and *Ex-officio*
Deputy Sheriff of the Supreme Court of Florida.

And afterwards, to-wit: on the 29th day of March, A. D. 1904, the defendant filed its demurrer to the alternative writ of mandamus, which demurrer is in the words and figures following, to-wit:

In the Supreme Court of Florida, January Term, A. D. 1904.

STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney General of the State of Florida, etc.,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Now comes the defendant, The Atantic Coast Line Railroad Company, a corporation, and says that the alternative writ is bad in substance and insufficient in law to be answered.

The substantial matters of law intended to be argued are as follows:

1. Said writ does not state or specify any instance or case of a shipment of phosphate falling within the provisions of the order of the 17th day of December, A. D. 1903, as alleged by said alternative writ to have been made by the railroad commission of the State of Florida, in which this defendant has disobeyed said order of December 17th, 1903, or has made a charge in excess of the rate prescribed by said order for the transportation of phosphate over its line of railroad from points in Florida to points in Florida.

2. The said alternative writ does not state or specify any instance or case in which there has been a violation of the order of the railroad commission of the State of Florida, alleged to have been made on the 17th day of December, 1903, or set up any facts showing that there had been a violation of such order by this defendant, by charging a rate or rates in excess of the rates prescribed by said order of December 17th, 1903.

3. The alternative writ aforesaid fails to state or set forth facts showing that there has been a violation in any way by this defendant of said order of December 17th, 1903, alleged by said alternative writ to have been made by the railroad commission of the State of Florida.

4. The said alternative writ, in so far as it attempts to show any violation of the alleged order of December 17th, 1903, of the railroad commission of the State of Florida, is a mere statement of opinion and conclusion as a matter of law of the State of Florida and relators of a violation of law by defendant of said order of December 17th, 1903, alleged by said alternative writ to have been made by the railroad commission of the State of Florida, and

22 fails to set up any fact or facts upon which this honorable court can form an opinion as to whether there has been a violation of such order of December 17th, 1903, by this defendant in any case or cases, instance or instances, of a shipment or shipments of phosphate from any point in Florida to another point in the State of Florida, falling within the provision of the said order.

5. The said writ fails to inform the defendant of the specific instance or instances in which said order of December 17th, 1903, has been violated by this defendant by charging a higher rate than that

prescribed by said order upon shipments of phosphate from a point in Florida to a point in Florida.

6. The said alternative writ is otherwise and in all respects insufficient in law to be answered unto by this defendant.

JOHN E. HARTRIDGE,
Attorney for Defendant.

I hereby certify that I am attorney for the Atlantic Coast Line Railroad Company, and that I believe the foregoing demurrer to be well founded in law.

JOHN E. HARTRIDGE,
Division Counsel for Atlantic Coast
Line Railroad Company.

STATE OF GEORGIA,
County of Chatham.

Personally appeared before me W. B. Denham, who, being duly sworn, deposes and says that he is the general superintendent of the Atlantic Coast Line Railroad Company, and that the foregoing demurrer is not interposed for the purpose of delay.

W. B. DENHAM.

Sworn to and subscribed before me this 25th day of March, A. D. 1904.

[SEAL.]

E. P. BACON,
Notary Public, Chatham Co., Ga.

23 And thereafter, on the 26th day of April, A. D. 1904, the supreme court of Florida made an order extending the time for filing briefs for both parties, which order is in the words and figures as follows, to wit:

In Supreme Court of Florida, January Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSION *et al.*, Plaintiff,
vs.
THE ATLANTIC COAST LINE RAILWAY COMPANY, Defendant.

This cause is this day submitted to the court upon oral argument by counsel for the respective parties, on the demurrer of the defendant to the alternative writ of mandamus, but the court not being advised of its judgment in the premises, time is taken to consider thereof. Upon application of counsel for the defendant for an extension of time for filing briefs, it is ordered that counsel for both parties be allowed until next Tuesday, May 3rd, to file briefs.

And afterwards, to wit: on the 28th day of June, A. D. 1904, the supreme court of Florida filed with the clerk of said court its opinion in the above cause, which opinion, with a statement of the case, is in the words and figures as follows, to wit:

24 In the Supreme Court of Florida, Division A, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney-General of the State of Florida, and J. M. Barrs, as Special Counsel of the Railroad Commissioners of the State of Florida, Plaintiff,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Defendant. } No. 1.

SAME, Plaintiff,
vs.
SEABOARD AIR LINE RAILWAY, a Corporation under the Laws of the State of Virginia and North Carolina, Defendant. } No. 2.

SAME, Plaintiff,
vs.
JACKSONVILLE & SOUTHWESTERN RAILROAD COMPANY, a Corporation, Defendant. } No. 3.

25 Statement.

The above mentioned three cases against three separate corporations are founded upon alternative writs and demurrers thereto, in the same language and terms, and the opinion in the first case will be considered as applying to each of them.

Upon the petition of the relators an alternative writ of mandamus issued out of this court on March 7, 1904, alleging in substance:

1. The incorporation of the respondent and that since the eighth of October, A. D. 1903, it has controlled and operated as a common carrier divers lines of railroad wholly or in part within the State of Florida, and has been engaged in the transportation of freight and passengers over its lines, from points in Florida to points in Florida.

2. That the State railroad commissioners, pursuant to notice of their intention to adopt a freight rate of one cent per ton per mile on phosphate from points within Florida to points within Florida (except points where the proposed rate would raise the rates then in force, and that to such points the rates then in force should remain the same), met in the city of Jacksonville, on November 16, 1903, at which place and time the respondent and other railroads, pursuant to said notice, were given an opportunity to show cause, if any they had, why the proposed rate should not be adopted.

3. That at the said time and place, respondent and other railroads filed answers, and by their request, were given until November 28, 1903, to file their briefs and supplemental briefs, which briefs were filed and considered by the railroad commissioners, and afterwards,

on December 17, 1903, the said commissioners, in session at Tallahassee, Florida, being satisfied that some of the then existing freight rates on phosphate from points in Florida to points within the said State, were unreasonably high, and should be reduced and
26 based upon a mileage rate, ordered that the rate to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida for the transportation of phosphate from points in Florida to points within said State, should not exceed one cent per ton per mile, provided, that where the rate of one cent per ton per mile would raise any rate then in operation, that said rate of one cent per ton per mile should not be effective, but that the rate as then charged by said railroad companies was then and there adopted in and by said order of the said railroad commissioners, as their rate between such points.

4. That the said railroad commissioners then further ordered that where a shipment of phosphate should pass over two or more railroads in reaching its destination within the State of Florida, the initial line might charge one and a half cents per ton per mile for the first ten miles which said phosphate should be hauled.

5. That the railroad commissioners then further ordered that where a shipment of phosphate from points in Florida to points in Florida should pass over two or more roads in reaching its destination within the State of Florida the provisions of rule 19, governing joint rates, are modified, so that the initial road should have the right to deliver shipments to the delivering road at such junctional point, within the State of Florida as it might desire, provided, however, that the rate charged for such shipment should be based upon the shortest mileage between the points of shipment and the point of destination.

6. That the said railroad commissioners then further ordered that the said rate therein prescribed should be effective on and after the 15th day of January, A. D. 1904. Copies of the order and of rule 19, are attached as parts of the writ, and marked Exhibits "A" and "B."

27 7. That the railroad commissioners prior to the 15th day of January, A. D. 1904, furnished all railroads doing business within the State with notice of the changes and revisions adopted by the said order, stating the time when the said changes and revisions would go into effect.

8. That although the Atlantic Coast Line Railroad Company was furnished with notice of the changes of phosphate rates as aforesaid, it has not obeyed said order, and has not put into effect the schedule of rates prescribed in and by said order, but refuses so to do, and in violation and disregard of the rate prescribed in and by said order, and contrary to the laws of Florida, now charges, and since the 15th day of January, A. D. 1904, has charged for the transportation of phosphate over its said lines of railroads, and railroads under its control or management, from points in Florida to points in Florida, rates in excess of the rates prescribed in and by said order, and the

said Atlantic Coast Line Railroad Company has refused, and still refuses, to otherwise comply with all and singular the aforesaid and other commands and directions of the said order of the said railroad commissioners made on the 17th day of December, A. D. 1903.

9. This, the ninth, paragraph concludes: "Now, therefore, we, being willing that full and speedy justice should be done in the premises, do command you, The Atlantic Coast Line Railroad Company, to forthwith put into operation and effect over all your lines of railroads, and all the railroads which are under your management or control, which are wholly or in part within the State of Florida, the rate prescribed in and by said order of the said railroad commissioners on the 17th day of December, A. D. 1903, to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida, for the transportation of phosphate from points in the State of Florida to points within said State, and do command you further to comply with all the commands and directions of said order of the said railroad commissioners, as contained in a duly certified copy of said order, which
28 is hereto attached and marked Exhibit A and made a part hereof, to the same extent as if fully set out herein, and that you continue to comply with all the commands and directions of said order, as long as the same shall be in force, or that you appear before the justices of our supreme court sitting within and for the State of Florida, at the court room in the city of Tallahassee, on the 29th day of March, 1904, at ten o'clock a. m. of said day, and show cause why you refuse to do so, and have you then and there this writ."

"EXHIBIT A.

Order No. 34.

Railroad Commission, State of Florida.

In the Matter of Freight Rate for the Transportation of Phosphate from Points in Florida to Points Within the State of Florida.

Due notice having been given to all the railroads doing business wholly or in part within the State of Florida, that there would be a meeting of the railroad commissioners in the city of Jacksonville on the 16th day of November, A. D. 1903, for the purpose of considering the adoption of a freight rate of one cent per ton per mile on phosphate shipped from points within the State of Florida to points within said State, except to such points where the proposed rate would raise the rate in force to such points, at which time all railroad companies and common carriers would be given an opportunity to be heard and show cause, if any they had, why the proposed rates should not be adopted:

In accordance therewith the commissioners met at the board of

trade rooms in the city of Jacksonville on said 16th day of November, and the railroads were given an opportunity to be heard, and answers were filed by the Atlantic Coast Line R. R., Seaboard Air Line railway, and the Jacksonville & Southwestern Ry., and
29 request made by them that they be given until Nov. 28th in which to file their briefs and supplemental briefs, which request was granted, and the briefs having been received by the commissioners, and duly considered by them in connection with the proposed reduction in the phosphate rate, and the commissioners being satisfied that some of the present freight rates on phosphate from points in the State of Florida to points within the State, are unreasonably high, and should be reduced and based upon a mileage rate:

It is therefore ordered by the railroad commissioners of the State of Florida, that the rate to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida, for the transportation of phosphate from points in the State to points within the State, shall not exceed one cent per ton per mile.

Provided, however, that where the rate of one cent per ton per mile will raise any rate now in operation, that said rate of one cent per ton per mile shall not be effective, but the rate as now charged by the railroad companies is hereby adopted by the railroad commissioners as their rate between such points.

It is further ordered, that where a shipment of phosphate shall pass over two or more railroads in reaching its destination within the State of Florida, the initial line may charge one and a half cents per ton per mile for the first ten miles which said phosphate shall be hauled.

It is further ordered, that where phosphate from points in Florida passes over two or more roads in reaching its destination within the State of Florida, that the provisions of rule 19, governing joint rates is hereby modified, so that the initial road shall have the right to deliver the shipment to the delivering road at such junctional point within the State of Florida as it may desire.

Provided, however, that the rate charged for such shipment shall be based upon the shortest mileage between the point of shipment and the place of destination.

30 It is further ordered that this rate shall be effective on and after January 15, 1904.

Done and ordered by the railroad commissioners of the State of Florida, in session, at their office in the city of Tallahassee, Florida, this 17th day of December, A. D. 1903.

(S'd) JEFFERSON B. BROWNE, Chairman.

Attest:
R. C. DUNNE, Secretary.

I, R. Hudson Burr, as acting chairman of the railroad commissioners of the State of Florida, do hereby certify that the above and foregoing is a full, true and correct copy of the order adopted by the railroad commissioners of the State of Florida, on the 17th day of December, A. D. 1903, in the matter of freight rate for the transportation of phosphate from points in Florida to points within the State of Florida, as the same appears upon the record of the proceedings of said commissioners.

Witness my hand this 7th day of March, A. D. 1904.

R. HUDSON BURR,
Acting Chairman of the Railroad Commissioners
of the State of Florida."

"EXHIBIT B.

Joint Rates Shall be Sum of Locals.

19. On all shipments of freight not governed by rule No. 1, originating and terminating in this State, which shall pass over the whole of two or more roads not under the same control, the maximum rates charged on such shipments shall not be greater than the sum of the local rates on such freights for the distance hauled over each road. The total rate thus ascertained on such freights from the point of shipment to the point of destination shall be
31 divided in such proportions between the roads over which such freights pass so as to give to each road interested in the shipment its local rate for the distance such shipment is hauled, conditioned upon the initial line delivering the traffic to the delivering road at its nearest junctional point. Nothing in this rule shall be construed to prevent the total of any joint rate made under this rule from being divided in such proportions between the roads interested in the same as they may agree upon, but a failure to so agree between the roads interested shall in no way affect the total joint rate to be charged and collected on, or work delay in the transportation of such freight, or be subject of appeal to the commission by the roads at interest; provided, however, that no railroad company shall discriminate between any other two or more railroad companies when the conditions and circumstances are practically the same.

I, R. Hudson Burr, as acting chairman of the railroad commissioners of the State of Florida, do hereby certify that the above and foregoing is a full, true and correct copy of rule 19, governing joint rates, as prescribed by the railroad commissioners of the State of Florida, and as the same appears upon the record of the proceedings of the said railroad commissioners.

Witness my hand this 7th day of March, A. D. 1904.

R. HUDSON BURR,
Acting Chairman of the Railroad Commissioners
of the State of Florida."

The respondent filed the following demurrer to the foregoing alternative writ: "Now comes the defendant, the Atlantic Coast Line Railroad Company, a corporation, and says that the alternative writ is bad in substance and insufficient in law to be answered.

The substantial matters of law intended to be argued are as follows: 1. Said writ does not state or specify any instance or case of a shipment of phosphate falling within the provisions of the order of the 17th day of December, A. D. 1903, as alleged by said
32 alternative writ to have been made by the railroad commission of the State of Florida, in which this defendant has disobeyed said order of December 17th, 1903, or has made a charge in excess of the rate prescribed by said order for the transportation of phosphate over its line of railroad from points in Florida to points in Florida.

2. The said alternative writ does not state or specify any instance or case in which there has been a violation of the order of the railroad commission of the State of Florida, alleged to have been made on the 17th day of December, 1903, or set up any facts showing that there had been a violation of such order by this defendant, by charging a rate or rates in excess of the rates prescribed by said order of December 17th, 1903.

3. The alternative writ aforesaid fails to state or set forth facts showing that there has been a violation in any way by this defendant of said order of December 17th, 1903, alleged by said alternative writ to have been made by the railroad commission of the State of Florida.

4. The said alternative writ, in so far as it attempts to show any violation of the alleged order of December 17th, 1903, of the railroad commission of the State of Florida, is a mere statement of opinion and conclusion as a matter of law of the State of Florida and ralators of a violation of law by defendant of said order of December 17th, 1903, alleged by said alternative writ to have been made by the railroad commission of the State of Florida, and fails to set up any fact or facts upon which this honorable court can form an opinion as to whether there has been a violation of such order of December 17th, 1903, by this defendant in any case or cases, instance or instances, of a shipment or shipments of phosphate from any point in Florida to another point in the State of Florida, falling within the provision of said order.

5. The said writ fails to inform the defendant of the specific instance or instances in which said order of December 17th, 1903, has been violated by this defendant by charging a higher rate
33 than that prescribed by said order upon shipments of phosphate from a point in Florida to a point in Florida.

6. That said alternative writ is otherwise and in all respects insufficient in law to be answered unto by this defendant.

JOHN E. HARTRIDGE,
Attorney for Defendant."

HOCKER, *J.* (*after stating the facts*):

It will be observed that the first, second, third, fourth and fifth grounds of demurrer present in various forms of statement the proposition that the alternative writ is bad and insufficient in law, because the recitals of the writ alleging a refusal of the respondent to put into effect the rates on phosphate prescribed by the order of the railroad commissioners are wanting in certainty, and amount simply to a conclusion of law. It is insisted that instances of violation should be set forth. This proceeding is instituted at the instance of an official body, the railroad commissioners, to compel the respondent to put into effect and practical operation the schedule of rates and system of rating prescribed in the order, and is not intended to compel the company to carry any particular phosphate for any particular individual. The writ recites that the order became effective on the fifteenth of January, 1904, and that respondent has not put into effect the schedule of rates prescribed therein, but refuses so to do, and in violation and disregard of the prescribed rates, now charges, and since the 15th day of January, 1904, has charged for the transportation of phosphate over its lines of railroad, and railroads under its control and management from points in Florida to points in Florida, rates in excess of the rates prescribed in and by said order, and it has refused and still refuses to comply with
34 all and singular the aforesaid, and other commands and directions of the said order of the railroad commissioners made on the 17th day of December, A. D. 1903. We think the recitals clearly import a refusal to comply with the said order in each and all of its directions—in other words, a refusal to comply with the schedule of rates as a system of rates. The allegation that the respondent now charges, and since the 15th day of January, 1904, has charged for transportation of phosphate rates in excess of the prescribed rates, simply accentuates and points out the particular thing which respondent is alleged to be doing, signifying its refusal to put into effect the prescribed schedule of rates and its violation and disregard thereof. The recitals of this writ thus used to compel the observance of a system or schedule of rates on phosphate are of similar import to those employed by the distinguished pleader who drew the writs in the unreported case of State *ex rel.* Attorney-General v. Florida Southern Railway Company, which was presented to this court in December, 1888, to compel the observance of the schedule of rates prescribed by the railroad commission on oranges. The writ in that case was subjected to the most ingenious and rigorous criticism, but was held good by this court. The argument that if instances of violation were cited in the writ such instances could probably be considered so as to show that such instances did not come under the jurisdiction of the State railroad commission, is not constraining. Our opinion is that the question whether this or that case can be used in support of a charge of a total disregard and violation of the order of the commission, is one

involving the relevancy, competency and probative force of evidence, and not one of pleading.

It is contended on several grounds that the recitals of the eighth paragraph of the writ taken separately, amount to no more than conclusions of law. We think, however, that this paragraph is to be considered as a whole, and, being so considered, is not substantially indefinite or uncertain. It is one sentence, the several recitals of which are connected by copulative conjunctions, and each
35 separate allegation is to be construed by its contextural connections. Thus considered it charges a general violation of the duty of the respondent in refusing to put the prescribed rule into practical operation, and by way of re-enforcement of this charge, that it is, and has been charging rates in excess of those prescribed. Certainty of allegation is requisite, but if the alternative writ states the facts on which the demand is based with sufficient precision to express the right of relator and the duty of the respondent in such a manner that the ordinary mind may easily apprehend them, we think this is all the certainty required to defeat a demurrer. Central D. & P. Tel. Co. v. Commonwealth, 114 Pa. St., 592, 7 Atl. Rep. 926; Fisher v. Mayor, &c., of Charleston, 17 West Va. 628; 13 Ency. Pl. & Pr., 674–5 and notes.

It is also objected that the writ does not recite the existence of phosphate, nor any tender of the same for transportation, nor refusal to transport any specific tender of phosphate at the prescribed rates. We do not think this is a tenable position on this demurrer. It is true, that generally material facts should be alleged by direct averment, and not by inference, but unequivocal averments will support implications that necessarily result, at least, on general demurrer. 6 Ency. Pl. & Pr., 269; State *ex rel.* Attorney General v. Johnson, 35 Fla. 2. Special demurrers, which at common law reached defects of formal statement, are abolished in this State. This court, like other courts, will take judicial notice of matters of common knowledge, and, therefore, knows that phosphate is produced in some portions of Florida, and is an article of transportation. The allegation that excessive charges are made for the transportation of phosphate necessarily implies that phosphate is tendered for transportation, and is transported, for if it were not actually tendered and offered for transportation, it could not be transported.

It is objected that the phrase "put into effect" and the word "charge," used in the eighth paragraph, and the mandatory clause are indefinite, and indeterminate in their meaning. To put
36 a rate into effect is to charge and receive that rate when the article to which it applies is transported; in other words, to give it practical operation. To charge is to "lay on," or "impose" as a load, tax or burden, to fix or demand a price for a thing or service. The phrase and word are of the most common use, and we fail to see how there can be any substantial difficulty in discovering their meaning.

We might close the opinion at this point, but the discussion both

orally and in the briefs has taken a wider range than is indicated in any ground of the demurrer. It is insisted that the order of the railroad commissioners is void, because it prescribes a less rate than one cent a ton per mile, where at the date of the order, a less rate was then being charged, which in effect amounts to a discrimination in favor of certain individuals, classes or communities and which is prohibited by the railroad commission act, chapter 4700, Laws of 1899. We discover nothing in the act or the order properly construed, which sustains this contention. Railroads and common carriers, it is true, are inhibited from making unjust discriminations in rates (sec. 4), but we discover nothing in the act which limits the discretionary powers of the railroad commission to make reasonable and just rates. It does not necessarily follow that in prescribing a particular rate lower than the general one, the commission have violated their authority. There may be circumstances which would justify such lower rates, and the act itself (sec. 8) makes the rates and regulations prescribed by the commission *prima facie* reasonable and just. The proviso of the order properly construed applies only to general rates to the public, and not to special rates given by railroad companies to individuals, if any such were given, as contended by the defendant.

It is further contended in argument that mandamus does not lie to enforce a continuing duty. We do not think this a sound contention. In the case above cited, as also in the case of State *ex rel.* Attorney-General v. Pensacola & A. R. Co., 27 Fla. 403, 9 South. Rep. 89, and State *ex rel.* Attorney-General v. Jacksonville
37 Terminal Company, 41 Fla. 377, 27 South. Rep. 225, some portions of the duties enforced by mandamus were of a continuing nature. See also Attorney-General v. City of Boston, 123 Mass. 460; People *ex rel.* Jackson v. Suburban R. Co., 178 Ill. 574, 53 N. E. Rep. 349; People v. New York Central and Hudson River R. R. Co., 28 Hun. 543, and particularly Goodel v. Woodbury, 71 N. H. 378, — Atl. Rep. —; Town of Mason v. Railroad Co., 51 West Va. 183, — S. E. Rep. —. And there is no doubt that mandamus is an appropriate remedy to compel observance of a valid regulation of the railroad commissioners imposing specific public duties upon railroad companies. 2 Elliott on Railroads, sections 697 *et seq.*; State v. Fremont, E. & M. V. R. Co., 22 Neb. 313, 35 N. W. Rep. 118; City of Potwin Place v. Topeka Ry. Co., 51 Kan. 609, 33 Pac. Rep. 309. See also, State *ex rel.* City of Bridgeton v. Bridgeton & M. Traction Co., 62 N. J. L. 592, 43 Atl. Rep. 715.

It is contended that the mandatory clause of the writ is broader in its terms and meaning than its recitals will support. We do not regard this as a sound contention. We deem it proper to say here, in order to prevent misapprehension, that we regard the recitals and mandatory part of the writ as embracing but one subject and purpose, viz: as reciting a total violation in each and all its directions of the order of the railroad commissioners, and as seeking to compel respondent to observe and put said order into effect and practical

operation as a totality. Upon a proper issue joined if the relator does not show that respondent was and is violating and refusing to observe the several rates which make up the whole schedule, the question would arise whether a peremptory writ could be issued. State *ex rel.* Moody v. Call, 39 Fla. 165, 22 South. Rep. 266; Florida, C. & P. R. Co. v. State *ex rel.* Town of Tavares, 31 Fla. 482, 13 South. Rep. 103; Tapping on Mandamus, top page 369 (marg. * 324); Haskins v. Board of Supervisors of Scott Co., 51 Miss. 406; Fisher v. Mayor, &c., of the City of Charleston, 17 West Va. 628.

38 The demurrer is overruled and the respondent is required to file its return showing obedience to the mandate of the alternative writ, or cause why it is not obeyed, on or before the 12th day of July, A. D. 1904.

Taylor, C. J., and Cockrell, J., concur.

Carter, P. J., and Shackleford and Whitfield, JJ., concur in the opinion.

39 And thereafter on the same day, the 28th day of June, A. D. 1904, the supreme court of Florida entered its judgment overruling the demurrer to the alternative writ of mandamus, and requiring respondent to file its return showing obedience to the mandate, or cause why it is not obeyed, which judgment is in the words and figures as follows, to-wit:

In Supreme Court of Florida, June Term, A. D. 1904, Division A.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney-General of the State of Florida, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of the State of Florida, Plaintiff,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Defendant.
} Mandamus.

40 This cause coming on to be heard upon the demurrer of the respondent to the alternative writ of mandamus, and having been submitted on briefs and oral argument of counsel for the respective parties, and the court having considered the same and being now advised of its judgment in the premises, it is considered, ordered and adjudged that the said demurrer be and the same is hereby overruled, and the respondent is required to file its return showing obedience to the mandate of the alternative writ of mandamus, or cause why it is not obeyed, on or before Tuesday, the 12th day of July proximo.

The opinion of the court in this cause was this day read by Mr. Justice Hocker, and ordered to be filed.

And thereafter, upon the 5th day of July, A. D. 1904, the respondent filed a motion to extend the time heretofore allowed respondent to file its return or answer to the alternative writ until the first Monday in August, 1904, which motion is in the words and figures following, to-wit:

STATE *ex Rel.* W. H. ELLIS, Att'y Gen'l *et al.*
vs.
ATLANTIC COAST LINE R. R. Co. } Mandamus.

Now comes the above entitled respondent and moves the court to extend the time heretofore allowed said respondent to file its return or answer to the alternative writ until the first Monday in August, 1904.

JOHN E. HARTRIDGE,
Att'y for Respondent.

41 And thereafter, upon the same day, the supreme court made an order extending the time for defendant to file its answer until the first Monday in August, 1904, which order is in the words and figures following, to-wit:

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney-General, *et al.*, Plaintiff,
vs.
ATLANTIC COAST LINE, Defendant.

This cause coming on to be heard upon motion of counsel for the defendant for an extension of time until the first Monday in August proximo, in which to file its answer to the alternative writ of mandamus herein; and upon consideration thereof it is ordered that the time for filing such answer be extended until Tuesday, the 19th instant.

And thereafter, upon the 18th day of July, A. D. 1904, the respondent filed its answer to the alternative writ of mandamus, which answer is in the words and figures following, to-wit:

In the Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney-General of the State of Florida, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of said State,
vs.
THE ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, etc.

42 The Return of The Atlantic Coast Line Railroad Company, a Corporation, the Defendant, to the Alternative Writ of Mandamus in the Above Cause.

The Atlantic Coast Line Railroad Company, defendant aforesaid, for return to said alternative writ of mandamus, says:

I.

That it is not true that this respondent has, since the 15th day of January, 1904, charged or received for the transportation of phosphate over its lines of railroads and railroads under its control and management, or either, or over any part of said lines or line of railroad, from points in Florida to points in Florida, rates in excess of the rates prescribed in and by the order of the railroad commission of December 17th, 1903, mentioned in the alternative writ of mandamus.

II.

And for a further and additional return to such writ, respondent says:

That it is not true that this respondent has, since the 15th day of January, 1904, charged or received for the transportation of phosphate over its lines of railroads and railroads under its control and management, or either, or over any part of said lines or line of railroad, from points in Florida to points in Florida, rates in excess of the rates prescribed in and by the order of the railroad commission of December 17th, 1903, mentioned in the alternative writ of mandamus; and defendant further says that there has been no tender or offer to respondent of any phosphate for transportation by it, on a shipment thereof from a point in Florida to a point in Florida since the said 15th day of January, 1904.

III.

And for a further and additional return to said writ, respondent says:

That it is not true that this respondent has, since the 15th
43 day of January, 1904, charged for the transportation of phosphate over its lines of railroads and railroads under its control and management, or either, or any part of said lines or line of railroads, from points in Florida to points in Florida, rates in excess of the rates prescribed in and by the order of the railroad commission of the State of Florida, mentioned in the writ of mandamus, and bearing date the 17th day of December, 1903, or has otherwise refused to comply with any of the commands and directions of said order of the railroad commission.

IV.

And for a further and additional return to said writ, respondent says:

That it is not true that this respondent has, since the 15th day of January, 1904, charged for the transportation of phosphate over its lines of railroad and railroads under its control and management, or either, or any part of said lines or line of railroad, from points in Florida to points in Florida, rates in excess of the rates prescribed in and by the order of the railroad commission of the State of

Florida, mentioned in the writ of mandamus, and bearing date the 17th day of December, 1903, or has otherwise refused to comply with any of the commands and directions of said order of the railroad commission; and defendant further says that there has been no tender or offer to respondent of any phosphate for transportation by it, on a shipment thereof from a point in Florida to a point in Florida since the said 15th of January, 1904.

V.

And for a further and additional return to said alternative writ of mandamus, respondent says:

That the tariff, rate and schedule of rates prescribed by the order of the railroad commission of the State of Florida, mentioned in the alternative writ, and bearing date December 17th, 1903, does
44 not give to the defendant a reasonable and just tariff of rates for the shipments covered thereby; and that such tariff of rates with the tariff of freight and passenger rates now in operation over the lines of railroad of the respondent, the Atlantic Coast Line Railroad Company, is not sufficient to afford, and does not afford, the respondent a reasonable income from the operation of its said lines, or, in fact, any net income from the operation of said lines of railroad in the conduct of business of said lines local to the State of Florida including the earnings from said lines of railroad in Florida from interstate and foreign commerce over and above the reasonable cost of constructing, maintaining and operating said railroad; and that the enforcement of said rates of said railroad commission would result in depriving respondent of its property without due process of law and of the equal protection of the law, contrary to the guarantees of the Constitution of the United States and the amendments thereto.

ATLANTIC COAST LINE RAILROAD COMPANY,
Attest: By JOHN E. HARTRIDGE, Its Attorney.
[SEAL.]

STATE OF GEORGIA,
County of Chatham.

Before me, E. P. Bacon, a notary public in and for Chatham county, State of Georgia, personally appeared W. B. Denham, and he being duly sworn deposes and says that he is general superintendent of the Atlantic Coast Line Railroad Company, a corporation under the laws of the State of Virginia, respondent in the above proceedings; and that the statements made in the above return are true.

W. B. DENHAM.

Sworn to and subscribed before me this 15th day of July, A. D. 1904.

E. P. BACON, [SEAL.]
Notary Public in and for Chatham County,
State of Georgia.

45 And afterwards, to-wit: on the 21st day of July, A. D. 1904, the supreme court made an order that the plaintiff plead to the defendant's return on or before Tuesday, July 26th, 1904, which order is in the words and figures following, to-wit:

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney-General, *et al.*, Plaintiff,
vs.
ATLANTIC COAST LINE R. R. Co., Defendant.

The defendant having filed its return to the alternative writ of mandamus issued herein within the time heretofore fixed by the order of the court, it is ordered that the plaintiff plead to such return on or before Tuesday, the 26th instant.

And afterwards, to-wit: on the 26th day of July, A. D. 1904, the plaintiff filed its motion to quash the return of the respondent to the alternative writ of mandamus, which motion is in the words and figures following, to-wit:

In the Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of the State of Florida, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of said State,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation.

Motion of the Plaintiff to Quash the Return of the Respondent to the Alternative Writ of Mandamus in the Above Entitled Cause.

46 And now comes the plaintiff in the above entitled cause by W. H. Ellis as attorney general for the State of Florida, and J. M. Barrs as special counsel for the railroad commissioners of said State, and moves the court to quash the return of the respondent to the said alternative writ of mandamus and to issue a peremptory writ of mandamus herein; and for the grounds of its said motion the plaintiff shows the court the following:

1. Said return is frivolous and evasive.
2. The defenses set up in said return are contradictory and inconsistent.
3. Said return is argumentative and states conclusions of law.
4. Said return does not state facts relied upon as a defense with such precision and certainty as to advise the court of all particulars necessary to enable them to pass judgment upon the sufficiency of the return.
5. Said return is insufficient to show why the peremptory writ should not issue.

W. H. ELLIS,
Attorney General of the State of Fla.
J. M. BARRS,
Special Counsel for the Railroad Commissioners of Fla.

And upon the same day the respondent filed its motion for leave to file an amendment to its return, which motion is in the words and figures following, to wit:

In the Supreme Court of the State of Florida, June Term, 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney-General, and J. M. Barrs, as Special Counsel of the Railroad Commission of said State,

vs.

47 ATLANTIC COAST LINE RAILROAD COMPANY, ETC.

Motion.

Now comes the Atlantic Coast Line Railroad Company and moves the court for leave to file the attached amendment to its return heretofore made herein to the alternative writ of mandamus in this cause.

JOHN E. HARTRIDGE,
Attorney and of Counsel for Respondent.

And upon the said day the supreme court made an order allowing the filing of the amendment of the defendant to its return, which order is in the words and figures following, to-wit:

This cause coming on to be heard upon motion of counsel for the defendant for leave to file an amendment to its return heretofore filed, and upon consideration thereof it is ordered that the amendment be filed, and that the State plead thereto on or before Friday, the 29th instant.

And thereupon, on the same day, the defendant filed its amended return in the words and figures following, to-wit:

In the Supreme Court of Florida, June Term, 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS of the State of Florida, The Attorney General of said State, and J. M. Barrs, as Special Counsel for The Railroad Commissioners of the State of Florida, Plaintiffs,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

48 The amended return of the Atlantic Coast Line Railroad Company, a corporation, etc., the defendant, to the alternative writ of mandamus in the above cause.

The Atlantic Coast Line Railroad Company, defendant aforesaid, by leave of the court, amends the fifth paragraph of its return heretofore filed herein, so as to make the same read as follows:

That the passenger and freight tariffs prescribed by the railroad commissioners of the State of Florida to be observed by the defendant in the carriage of freight and passengers in the State of Florida, including the schedule of tariff of rates sought to be enforced in this proceeding, are unreasonable and do not give to the defendant fair and reasonable compensation for the services required to be performed by it in the carriage of such freight and passengers; and that the enforcement of such tariff and rates of said Florida railroad commission will result in depriving respondent of its property without due process of law and of the equal protection of the laws contrary to the guarantees of the Constitution of the United States and the amendments thereof.

ATLANTIC COAST LINE RAILROAD COMPANY,

Attest: [SEAL.] By JOHN E. HARTRIDGE, Division Counsel.

STATE OF FLORIDA, County of Duval.

Before me, a notary public in and for said State and county, personally appeared L. E. Spencer, who, being first duly sworn, deposes and says that he is the agent of the Atlantic Coast Line Railroad Company, a corporation, respondent in the above cause, and that the statements made in the above return are true.

L. E. SPENCER.

Sworn and subscribed to before me this 23rd day of July, A. D. 1904.

E. M. RORABECK,

[SEAL.] Notary Public State of Florida at Large.

My commission expires Nov. 21, 1907.

49 And afterwards, on the 29th day of July, A. D. 1904, the plaintiff filed its motion to quash the amended return to the alternative writ and to issue a peremptory writ of mandamus, which motion is in the words and figures, following to-wit:

In the Supreme Court of Florida, July Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of the State of Florida, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of Said State,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY.

Motion of the Plaintiff to Quash the Amended Return of the Respondent to the Alternative Writ of Mandamus in the Above Entitled Cause.

And now comes the plaintiff in the above entitled cause by W. H. Ellis, as atterney general for the State of Florida, and J. M. Barrs,

as special counsel for the railroad commissioners of said State, and moves the court to quash the amended return of the respondent to the said alternative writ of mandamus and to issue a peremptory writ of mandamus herein; and for grounds of its said motion the plaintiff shows the court the following:

1. Said return is frivolous and evasive.
2. The defenses set up in said return are repugnant and inconsistent.
3. Said return is argumentative and states conclusions of law.
4. Said return does not state facts relied upon as a defense with such precision and certainty as to advise the court of all particulars necessary to enable them to pass judgment upon the sufficiency of the return.
5. Said return is insufficient to show why a peremptory writ of mandamus should not issue.

WM. H. ELLIS,
50 Attorney General of the State of Fla.
J. M. BARRS,
Special Counsel for the Railroad
Commissioners of Florida.

And on the same day, the supreme court made an order, which order is in the words and figures following, to-wit:

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney-General, &c., *et al.*, Plaintiff,
vs.
ATLANTIC COAST LINE R. R. Co., Respondent.

This cause is this day submitted to the court upon motions of counsel for the plaintiff to quash the returns of the respondent, and for a peremptory writ of mandamus, but the court not being advised of its judgment in the premises, time is taken to consider thereof.

And afterwards, upon the 30th day of July, A.D. 1904, the supreme court made an order that the motion of plaintiff in so far as it relates to the first four returns be granted; and in so far as it relates *the* the fifth amended return be denied; and granting counsel for respondent time to apply for leave to file further amended return, which order is in the words and figures following, to-wit:

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney-General, *et al.*, Plaintiffs,
vs.
ATLANTIC COAST LINE R. R. Co., Respondent.

51 This cause having been submitted to the court upon motions of plaintiffs to quash the returns of the respondent and

for a peremptory writ of mandamus, upon consideration thereof it is ordered that the motion, in so far as it relates to the first four returns, be and the same is hereby granted; and it is further ordered that the motion, in so far as it relates to the 5th amended return, be and the same is hereby denied. Counsel for the respondent asking time within which to apply for leave to file further amended return to the alternative writ, time is granted until Monday next at 10 o'clock a. m.

And afterwards, upon the 1st day of August, A. D. 1904, the plaintiff filed its motion for an order to take testimony, which motion is in the words and figures following, to-wit:

In the Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS of the State of Florida, &c.,
vs.
THE ATLANTIC COAST LINE RAILROAD COMPANY, &c.

Joinder of Issues on Return and Motion for Order to Take Testimony.

Now comes The State of Florida and joins issue upon the fifth amended return of respondents to the alternative writ of mandamus issued herein, and moves the court for an order to take testimony on the issues joined.

W. H. ELLIS,
Attorney General of the State of Florida.
J. M. BARRS,
Special Counsel for the State of Florida.

52 And upon the same day the supreme court made an order that the cause be set for trial on the 4th day of October, A. D. 1904, which order is in the words and figures following, to-wit:

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney General, &c., *et al.*, Plaintiff,
vs.
ATLANTIC COAST LINE RY. CO., Respondent.

Counsel for the respondent having announced in open court that it did not desire to apply for leave to further amend its return, comes now the plaintiff and files its joinder of issue upon the amended return of the respondent to the alternative writ of mandamus herein, and moves for an order to take testimony on the issues joined; and thereupon the cause being at issue, it is ordered that same be set for trial on the 4th day of October, A. D. 1904, upon which day the

parties are required to produce their testimony before the court. In the meantime if either party so desires, it may take depositions of witnesses, upon commission issued by the clerk of this court, or before a justice of the peace in accordance with the statutes of this State and the rules governing circuit courts in the matter of depositions; and the clerk of this court is directed to issue commissions for the taking of such depositions as may be duly applied for by either party, in accordance with such statutes and rules.

53 And afterwards, to-wit: on the 4th day of October, A. D. 1904, the supreme court made an order that the case be continued for hearing until the 12th instant, which order is in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* R. R. COMMISSIONERS ET AL., Relator,
vs.
ATLANTIC COAST LINE R. R. Co., Defendant.

This cause having been set for trial on this day, now upon application of counsel for the respondent it is ordered that the same be continued for hearing on Wednesday, the 12th instant.

And afterwards, to-wit: on October 12, 1904, the supreme court made an order in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS *et al.*, Plaintiff,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

54 This cause being at issue, and having been set for trial on this day, come now the parties by their counsel and the defendant produces the following witnesses, who were sworn by the clerk, to prove the issues in its behalf, *viz:* William B. Denham, R. S. McIver, Geo. S. Le Grand and C. J. Joseph; and thereupon the plaintiff introduces and files as evidence the annual reports filed with the railroad commission for the year ending June 30, 1902, of the following railroads (A) The Savannah, Florida & Western Ry. Co., (B) Florida Southern R. R. Co., (C) Sanford & St. Petersburg R. R. Co., (D) Florida Midland R. R. Co. and (E) St. Johns & Lake Eustice R. R., and the annual report (F) filed with the railroad commission for the year ending June 30, 1903, by the Atlantic Coast Line Railroad Company; whereupon defendant, in rebuttal, files as evidence

the seventh annual report of the railroad commission, for the year ending March 1, 1904. Thereupon the cause is continued for argument until to-morrow morning at 11 o'clock.

And afterwards, to-wit: on the 13th day of October, 1904, the supreme court made an order in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS *et al.*, Plaintiff,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

In pursuance of an order entered herein on yesterday, this cause is now submitted on the evidence introduced at that time and the argument of counsel for the respective parties, but the court not being advised of its judgment in the premises, time is taken to consider thereof.

55 And afterwards, to-wit: on the 19th day of October, A. D. 1904, the supreme court of Florida, filed with the clerk of the supreme court of Florida its opinion in this cause, which opinion is in the words and figures as follows, to-wit:

56 In the Supreme Court of Florida, en Banc., June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney-General of said State, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of the State of Florida, Plaintiff,
v.
ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Respondent.
} Original.

COCKRELL, *J.*:

This cause is before us for final determination upon the proof taken on the issues raised by the amended return of the respondent filed by leave of this court July 26, 1904. A motion to quash this return was overruled upon respondent's contention that the return presented the two issues, first that the phosphate rate here sought to be enforced was in and of itself unreasonable, and, second, that taken in connection with the other schedule of freight rates enforced by the State railroad commission in Florida, its enforcement would result in depriving the respondent of its property without due process of law and of the equal protection of the law, contrary to the

guaranties of the Constitution of the United States and the amendments thereof.

57 Has the respondent by its proof overcome the presumption of reasonableness which the statutes of Florida cast around the findings of its railroad commission? We answer unhesitatingly that it has failed to sustain the return in both particulars.

Without attempting to set out what amount of proof is necessary to overcome such presumptions, we shall content overselves with pointing out a few only of the lapses in the proof offered us. There is a total lack of positive proof that the commission rate is materially less than that now charged. The company proves merely that its books do not show that any local phosphate has been carried by it, but does not show what rate it charges on the interstate shipments of phosphate. There is some showing of the expensiveness of handling phosphate for foreign shipment, much of which would not enter into the local or intrastate business, should such be carried, but nothing is shown from which this court can say that the rate fixed by the commission is unreasonable. The evidence offered might tend to show that the rate is unnecessary or that it is speculative, but such questions the court is not called upon to decide. Undoubtedly if phosphate be carried at the rate fixed by the commission there will be some increase in the gross earnings, and when tried it may be found profitable.

The other issue the respondent has likewise failed to meet. Taking the figures from the brief filed by the respondent we find that the local business alone produces a net earning of at least 3% on the total value of the road in Florida, charging against such income the whole of the taxes. While a State is not permitted to offset local business against interstate business, and to justify low local rates by reason of the profitableness of the latter, yet the interstate and foreign business may and should be considered in determining the proportion of the value of the property of the company assignable to local busi-

58 ness. There is no proper showing of the interstate and foreign business, so that we may determine on what fraction of the whole value of the property in Florida the company might be entitled to earn an income from local business; there is, however, a showing that the interstate and foreign business is large and on a proper showing and a proper proportioning of the service between domestic and foreign business this percentage of net income would be largely increased. Under the scheme of distribution of the earnings of the whole road between the several States through which it runs, a ton of Florida oranges or early vegetables is allowed the same credit as a ton of coal in Virginia, and no more.

We have examined with care all the rate cases decided by the Supreme Court of the United States and see nothing therein to conflict with the views expressed above.

Under the burden of proof cast by the law upon the respondent we find that the rate in question is not unreasonable, and further find that said rate, taken in connection with the other rates pre-

scribed by the railroad commission, does not deprive the respondent of his property without due process of law, nor does it deprive the respondent of the equal protection of the law within the inhibitions of the Federal Constitution.

Mr. Justice Carter, who has been called away by reason of illness in his family, took part in the discussion of this case and stated his concurrence with the conclusions announced.

The peremptory writ is awarded.

Taylor, C. J., Shackleford, Hocker and Whitfield, JJ., concur.
Carter, J., absent.

59 And afterwards, to-wit: on the 19th day of October, 1904, the supreme court entered its judgment in favor of the plaintiff and ordered that a peremptory writ of mandamus issue, which judgment is — the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney-General of said State, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of the State of Florida, Plaintiff,
v.
ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Respondent. } Original.

This cause coming on to be heard upon the amended return of the respondent filed by leave of the court on July 26, 1904, and the joinder of issue upon the amended return of the respondent to the alternative writ of mandamus issued herein, and upon oral and documentary evidence in behalf of the respective parties, submitted on the 12th instant, and having been argued by counsel for the respective parties, and the court having considered the same, and being now advised of its judgment in the premises, finds the issues in favor of the plaintiff; therefore it is ordered that the peremptory writ of mandamus be and the same is hereby granted; and it is further ordered that the plaintiff do recover of the respondent its costs by it in this behalf expended, which costs are taxed at the sum of
60 —; and it is further ordered that the respondent is required to make return to this court instanter of its full compliance with the commands of the said peremptory writ of mandamus.

The opinion of the court in this cause was this day read by Mr. Justice Cockrell and ordered to be filed.

61 And afterwards, to-wit, on the 2nd day of November, A. D. 1904, came the respondent, by counsel, and filed in open court before the chief-justice its petition for the allowance of a writ

of error *the* the judgment heretofore rendered herein returnable before the Supreme Court of the United States, which petition is in the words and figures as follows, to-wit:

In the Supreme Court of the State of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of said State, and J. M. Barrs, as Special Counsel for Jefferson B. Browne, John L. Morgan, and R. Hudson Burr, Railroad Commissioners of said State, Plaintiffs,
vs.
THE ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation under the Laws of the State of Virginia, Respondent.
} Mandamus.

To the Honorable R. Fenwick Taylor, chief justice of the supreme court of the State of Florida:

The petition of the Atlantic Coast Line Railroad Company, a body corporate under the laws of the State of Virginia, the respondent in the above stated case, showeth that a final judgment was rendered by the said supreme court of the State of Florida in said cause on the 19th day of October, A. D. 1904, and that said cause is an action by writ of mandamus in said supreme court of
62 Florida in the exercise of its original jurisdiction; and that in and by said judgment a peremptory writ of mandamus was awarded against respondent, compelling the respondent to put into effect and operation a schedule and tariff of freight for the carriage of phosphate from points in Florida to points in Florida prescribed by the railroad commissioners of the State of Florida by an order made on the 17th day of December, A. D. 1903; and that in and by the amended fifth return of respondent to the alternative writ of mandamus in said cause it was alleged by the respondent that the passenger and freight tariff prescribed by the railroad commissioners of the State of Florida to be observed by respondent in the carriage of freight and passengers in the State of Florida, including the schedule or tariff of rates sought to be enforced in this proceeding, was unreasonable, and did not give to the respondent fair and reasonable compensation for the services required to be performed by it in the carriage of freight and passengers and that the enforcement of such tariff of rates of said Florida railroad commission would result in depriving respondent of its property without due process of law and of the equal protection of the laws, contrary to the guarantees of the Constitution of the United States and the amendments thereof. That by the decision and judgment of the said supreme court of the State of Florida, rendered upon the issues made by said amended fifth return after the hearing of testimony

in the cause, it was adjudicated by said supreme court of Florida both that the rate so prescribed by said order of the railroad commission was not unreasonable and that said rate, taken in connection with the other rates prescribed by the said railroad commission, does not deprive the respondent of its property without due process of law nor of the equal protection of the law within the inhibition of the Federal Constitution.

The said supreme court of the State of Florida is the highest court of the State of Florida having jurisdiction of said cause, and said judgment is a final judgment in the highest court of the State of Florida in which a decision in said suit could or can be had.

63 Your petitioner, therefore, prays your honor to allow a writ of error to the said respondent in the above stated cause, returnable to the Supreme Court of the United States, according to the rules of said last named court, the acts of Congress and the Constitution of the United States in such cases made and provided; and that your honor will fix the amount of the penalty of bond to be given by petitioner and to operate as a supersedeas to the enforce ment of such judgment of the supreme court of Florida.

And your petitioner, as in duty bound, will ever pray.

JOHN E. HARTRIDGE,
Attorney for Atlantic Coast Line Railroad Company.

Whereupon on the same day the prayer of the petitioner was granted by an order in the words and figures as follows, to-wit:

Upon reading and considering the foregoing petition, and it appearing that the cause is one in which the Atlantic Coast Line Railroad Company is entitled to a writ of error under the Constitution of the United States and the acts of Congress, the writ of error hereby prayed for is hereby allowed; and the amount of the penalty of the bond to be given by petitioner to operate as a supersedeas to the enforcement of the judgment of the supreme court of Florida is hereby fixed at two thousand dollars.

Done at Tallahassee, Florida, this 2nd day of November, A. D. 1904.

R. F. TAYLOR,
Chief-Justice Supreme Court of Florida.

And thereafter upon the same day, the 2nd day of November, 1904, upon presentation to the chief-justice of the aforesaid petition for the allowance of a writ of error, the same was allowed by the chief-justice as appears upon the original writ of error, the original of which writ of error with the allowance thereof is in the words and figures as follows, to-wit:

64 THE UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the supreme court of the State of Florida, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment, of a plea which is in the said supreme court of the State of Florida before you, or some of you, being the highest court of law and equity of the said State in which a decision could be had in the said suit between the State of Florida upon the relation of W. H. Ellis as attorney-general of said State, and J. M. Barrs as special counsel for Jefferson B. Browne, John L. Morgan and R. Hudson Burr, railroad commissioners of said State, and the Atlantic Coast Line Railroad Company, a corporation under the laws of the State of Virginia, wherein was drawn in question the validity of an authority exercised under said State on the ground of the same being repugnant to the Constitution of the United States as depriving said Atlantic Coast Line Railroad Company of its property without due process of law, and of the equal protection of the laws, and the decision was in favor of the validity of such authority, a manifest error hath happened to the great damage of the said Atlantic Coast Line Railroad Company, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first day of December, A. D. 1904, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief-Justice of said Supreme Court of the United States, the 2nd day of November, in the year of our Lord nineteen hundred and four.

[Seal U. S. Circuit Court, Northern Dist. of Florida.]

F. W. MARSH,
Clerk United States Circuit Court, Fifth
Circuit and Northern District of Florida,
By J. J. HODGES,
Dep. Clerk.

Writ of error allowed November 2nd, 1904.

R. F. TAYLOR,
Chief-Justice Supreme Court of Florida.

[Endorsed:] Filed Nov. 2 1904 B. B. Wilson, clerk supreme court.

65 And upon the same day, the 2nd of November, A. D. 1904, a citation was allowed by the chief-justice, as appears by the original thereof, which original citation, with acceptances of service thereof by the attorneys for the defendant in error, is in the words and figures as follows, to-wit:

66 THE UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the State of Florida upon the relation of W. H. Ellis as attorney-general of said State, and J. M. Barrs as special counsel for Jefferson B. Browne, John L. Morgan and R. Hudson Burr, railroad commissioners of said State, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first day of December, A. D. 1904, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Florida wherein the Atlantic Coast Line Railroad Company, a corporation under the laws of the State of Virginia, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the final judgment therein rendered against the said plaintiff in error on the 19th day of October, 1904, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. F. Taylor, chief-justice of the supreme court of the State of Florida, this the second day of November, in the year of our Lord nineteen hundred and four (A. D. 1904).

R. F. TAYLOR,
Chief-Justice of the Supreme Court of Florida.

By the chief-justice:

[Seal of the Supreme Court of the State of Florida.]

Attest:
B. B. WILSON,
Clerk Supreme Court, State of Florida.

Service accepted this November 3rd, 1904.
W. H. ELLIS,
Att'y Gen'l of State of Florida.

Service accepted this 4th day of November, 1904.
J. M. BARRS,
Special Counsel for Railroad Commission,
State of Florida.

[Endorsed:] The State of Florida *ex rel.* W. H. Ellis, etc., vs. Atlantic Coast Line Railroad Company. Citation. Filed Nov. 11, 1904. B. B. Wilson, clerk supreme court.

67 And thereafter on the said day, the 2nd of November, A. D. 1904, the original supersedeas bond of the plaintiff in error on this writ of error, approved by the Honorable R. F. Taylor, chief-justice of the supreme court of the State of Florida, was filed, which said supersedeas bond is in the words and figures as follows, to-wit:

Know all men by these presents, that we, the Atlantic Coast Line Railroad Company, a body corporate under the laws of the State of Virginia, as principal, and the American Surety Company, a corporation created, existing and being under the laws of the State of New York and doing business in Jacksonville, Florida, as surety, are held and firmly bound unto the State of Florida in the sum of two thousand dollars, to be paid unto the State of Florida, its successors and assigns, the payment of which amount, well and truly to be made, we bind ourselves and our successors jointly and severally, firmly by these presents.

Sealed with our seals this the 31st day of October, A. D. 1904.

Whereas, lately at a term of the Supreme court of the State of Florida, in a cause pending in said court, wherein the State of Florida upon the relation of William H. Ellis as attorney general of said State, and J. M. Barrs as special counsel for Jefferson B. Browne, John L. Morgan and R. Hudson Burr, railroad commissioners of said State, was plaintiff, and the said Atlantic Coast Line Railroad Company, which is described in said proceedings as a body corporate under the laws of Virginia, was defendant, a final judgment was rendered in and by said court against said defendant on the 19th day of October, in the year 1904, awarding a peremptory writ of mandamus against said Atlantic Coast Line Railroad Company, commanding it to put into operation and effect the rate prescribed by an order of the railroad commissioners of the State of Florida made on the 17th day of December, 1903, for transportation of phosphate from points in the State of Florida to points within said State; and,

68 Whereas, the Atlantic Coast Line Railroad Company is about to apply to the chief-justice of the supreme court of the State of Florida for the allowance of a writ of error to the Supreme Court of the United States for a review by said Supreme Court of the United States of the aforesaid judgment of the said supreme court of the State of Florida;

Now, therefore, the condition of the above obligation is such that if the said Atlantic Coast Line Railroad Company shall make such application to the chief justice of the supreme court of the State of Florida and the chief justice of said supreme court of the State of Florida shall allow such writ of error and the Atlantic Coast Line Railroad Company shall prosecute said writ of error to effect, and shall answer all damages and costs that may be awarded against said company if it fails to make good its plea, then the above obligation to be void, but otherwise to remain in full force and virtue.

In witness whereof, the Atlantic Coast Line Railroad Company has caused its name to be signed hereto by John E. Hartridge, its

attorney, and its seal to be affixed and attested by John E. Hartridge, its attorney, he being first duly authorized thereto, and the said American Surety Company has caused its name to be hereto signed by Bion H. Barnett, its resident vice president, and its seal to be hereto affixed and attested by Wm. M. Bostwick, Jr., its resident secretary, this 31st day of October, A. D. 1904.

ATLANTIC COAST LINE RAILROAD COMPANY,
By JOHN E. HARTRIDGE, Its Attorney.

Attest:
JOHN E. HARTRIDGE, Its Attorney.

[Seal of the Atlantic Coast Line R. R. Co.]

AMERICAN SURETY COMPANY,
By BION H. BARNETT,
It- Resident Vice-Pres.

[Seal of the American Surety Company.]

Attest:
W. M. BOSTWICK, Jr.,
Its Resident Secretary.

69 Approved this Nov. 2nd, 1904.

R. F. TAYLOR,
Chief-Justice Supreme Court of Florida.

And thereafter on the same day, the 2nd day of November, A. D. 1904. the plaintiff in error, by its attorney, filed in said supreme court of Florida its assignment of errors on the writ of error to the Supreme Court of the United States, the original of which is in the words and figures as follows, to-wit:

70 In the Supreme Court of the State of Florida, June Term, 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of said State, and J. M. Barrs, as Special Counsel for Jefferson B. Browne, John L. Morgan, and R. Hudson Burr, Railroad Commissioners of said State, Plaintiff,
vs.
THE ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation under the Laws of the State of Virginia, Respondent.
} Mandamus.

Now comes the respondent above named, and in connection with its petition for writ of error, assigns the following errors in the action and proceedings of the said the supreme court of the State of Florida in said cause:

First. The court erred in overruling and adjudging insufficient in law the demurrer of the respondent to the alternative writ of mandamus in said cause.

Second. The court erred in granting the motion of the plaintiff to quash the return of the respondent to the alternative writ of mandamus, and holding said return insufficient in law.

Third. The court erred in its final judgment awarding the peremptory writ of mandamus.

Fourth. The court erred in its final judgment awarding the
71 peremptory writ of mandamus and in adjudging that the rate prescribed by the order of the railroad commissioners of the State of Florida of the 17th day of December, 1903, was not unreasonable.

Fifth. The court erred in its final judgment awarding the peremptory writ of mandamus and adjudging that the rate prescribed by the order of the railroad commission of the State of Florida of December 17th, 1903, taken in connection with the other rates prescribed by said railroad commission, does not deprive the respondent of its property without due process of law within the inhibition of the Federal Constitution.

Sixth. The court erred in its final judgment awarding the peremptory writ of mandamus and adjudging that the rate prescribed by the order of the railroad commission of the State of Florida of December 17th, 1903, taken in connection with the other rates prescribed by said railroad commission, does not deprive the respondent of its property without due process of law nor of the equal protection of the law within the inhibition of the Federal Constitution.

Seventh. The court erred in its final judgment awarding the peremptory writ of mandamus and adjudging that the rate prescribed by the said order of the railroad commission of the State of Florida of December 17th, 1903, was not unreasonable, and that said rate taken in connection with the other rates prescribed by said railroad commission does not deprive the respondent of its property without due process of law nor of the equal protection of the law within the inhibition of the Federal Constitution.

Eighth. The court erred in each and every of its orders and judgments rendered in the above cause.

Wherefore respondent prays that said errors may be cured
72 and the judgment of the said the supreme court of the State of Florida be reversed and held for naught.

JOHN E. HARTRIDGE,
Attorney for Petitioner.

72½ [Endorsed:] In the supreme court of Florida. State of Florida *ex rel.* W. H. Ellis, etc., *et al.*, vs. Atlantic Coast Line Railroad Company. Assignment of errors. Filed Nov. 2 1904 B. B. Wilson, clerk supreme court. John E. Hartridge, Jacksonville, Fla. att'y for A. C. L. R. Co.

73 And afterwards, to-wit: on the 29th day of November, A. D. 1904, the plaintiff in error by its attorney, filed in the supreme court of Florida its petition for an order extending the time for filing the record in the Supreme Court of the United States, which petition is in the words and figures as follows, to-wit:

In the Supreme Court of the State of Florida.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney-General of said State, and J. M. Barrs, as Special Counsel for Jefferson B. Browne, John L. Morgan and R. Hudson Burr, Railroad Commissioners of said State,

vs.

THE ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation under the Laws of the State of Virginia.

To the Honorable R. F. Taylor, chief justice of the supreme cour of the State of Florida:

The petition of the Atlantic Coast Line Railroad Company respectfully represents that owing to the fact that its counsel in this case as above, John E. Hartridge, Esq., is alone in possession of the detail and history of the case, and by reason thereof solely in a position to get up the bill of exceptions therein and the work of getting up the bill of exceptions could not be delegated to nor placed with any one else.

74 Petitioner further represents that its counsel, John E. Hartridge, Esq., has been continuously engaged in the several courts of the State up to and including the date of this application, in the active trial of cases and in attending to imperative matters calling him to other portions of the State; that he was compelled to be in Live Oak prior to the meeting of the court there, and subsequently was engaged in Lake City and then in Nassau county, in the trial of cases, and afterward in attendance at the court in Bradford county in a capital case which required two visits to that county, the case being continued upon the last visit, and has cases set for trial now for the entire week approaching and thereafter in Orange county.

Petitioner further represents that *owing that* the stenographic notes as written out by the stenographer are so imperfect that it will be necessary for the said John E. Hartridge to visit North Carolina for the purpose of going over the memorandum of the stenographer with the witnesses in order to get a correct narration of the testimony, and that up to this time it has been impossible for him to leave the State for that purpose.

Petitioner further represents that an extension of time for filing the record in this case will not cause any delay in the hearing of same in the Supreme Court of the United States, as if filed five weeks

later the appellate court would be enabled to reach the case as early as if filed now.

Petitioner deems it not amiss to suggest that if the time for filing the record in this case is not extended it will operate so as to prevent the petitioner being heard in the appellate court, since the time limit now for filing the record is so short as to prevent its being filed therein.

75 The premises considered, your petitioner prays that an order be made extending the time for filing the record in this case as above to such time as is reasonable in the judgment of your honor, and petitioner respectfully suggests that it be given until the 15th day of January, 1905, within which to file said record.

ATLANTIC COAST LINE RAILROAD COMPANY,
By JOHN E. HARTRIDGE, Its Attorney.

[Seal of the Atlantic Coast Line R. R. Company.]

STATE OF FLORIDA, }
County of Duval. }

Before me, a notary public in and for said State and county, personally came John E. Hartridge, who, being first duly sworn, deposes and says that he has read the foregoing petition, and knows the contents thereof, and prepared the same, and that the same is true in substance and in fact.

JOHN E. HARTRIDGE.

Sworn to and subscribed before me this 26th day of November, A. D. 1904.

[SEAL.] E. M. RORABECK,
Notary Public, State of Florida at Large.

My commission expires Nov. 21, 1905.

And thereafter on the same day, the 29th day of November, A. D. 1904, an order was made by the chief justice extending the time for filing the record, which order is in the words and figures as follows, to-wit:

76 In the Supreme Court of the State of Florida.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of said State, and J. M. Barrs, as Special Counsel for Jefferson B. Browne, John L. Morgan, and R. Hudson Burr, Railroad Commissioners of said State,

vs.

THE ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation under the Laws of the State of Virginia.

This day came the respondent, The Atlantic Coast Line Railroad Company, by John E. Hartridge, Esq., its attorney, and made appli-

cation for an order extending the time for the filing of the record in this case as above, and cause being shown therefor, such application is granted and the time for filing said record on the part of the respondent is extended until the ninth day of January, 1904.

Done and ordered this 29th day of November, 1904.

R. F. TAYLOR,
Chief Justice of the Supreme Court of the State of Florida.

77 And during the same term of the supreme court of Florida, and on the 23rd day of December, in the year of our Lord one thousand nine hundred and four, the said defendant made up and tendered its bill of exceptions which were settled and signed by the chief-justice of said court and ordered to be made a part of the record, which said bill of exceptions is in the words and figures as follows, to-wit:

78 In the Supreme Court of the State of Florida, June Term, 1904.

THE STATE OF FLORIDA on the Relation of W. H. ELLIS as Attorney General and J. M. Barrs as Special Counsel for the Railroad Commissioners of the State of Florida,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY.

Be it remembered, that on the 12th day of October, in the year of our Lord one thousand nine hundred and four, at a term of the supreme court of the State of Florida, beginning and holden at Tallahassee, in the State of Florida, before Honorable R. Fenwick Taylor, chief justice of said court, and the Honorables Francis B. Carter, Thomas M. Shackleford, William A. Hocker, Robert S. Cockrell and James B. Whitefield, associate judges of said court, the issue joined in the above stated cause between the said parties (*pro ut* the pleadings) came on to be tried before the said chief justice and said associate justices, and upon the trial of that issue The Atlantic Coast Line Railroad Company, respondent, pursuant to the statute in such cases made and provided, to maintain and prove the issue on its part, then and there produced as a witness W. B. Denham, who, being first duly sworn, testified as follows:

My name is W. B. Denham; I am 55 years old, and reside at Savannah, Ga. I am general superintendent of the second division of the Atlantic Coast Line Railroad Company. I have been connected with the railroad service in Florida about 30 years. I commenced as a civil engineer in locating and constructing railroads in Florida, and afterwards was in the operating department as superintendent and roadmaster, and later as superintendent of lines
79 in Florida. The division over which I am superintendent consist of all the lines owned by the Atlantic Coast Line Rail-

road Company south of Savannah, in the States of Georgia, Alabama and Florida. Before the Savannah, Florida and Western Railway Company was consolidated with the Atlantic Coast Line I was its general superintendent. The Atlantic Coast Line Railroad Company has about 1263.74 miles of rail and sidetrack in Florida.

Prior to the consolidation of the Savannah, Florida and Western Railway Company with the Atlantic Coast Line Railroad Company the per cent. of cost of operation was kept separately on each of the roads comprising what was known as the Plant system of railways, which came apart, by consolidation, of the Atlantic Coast Line Railroad Company. The percentage of cost for the operation of the property prior to the consolidation, for the fiscal year 1901 was 71.6 of its gross earnings, and for 1902, 68.7 of its gross earnings. Since the consolidation the percentage of cost has not been kept separately, but has been consolidated and the percentage taken over the entire A. C. L. R'y system. The percentage of cost for the operation of the Florida properties of the company for the fiscal year ending with June, 1904, was greater than before, for several reasons. I am satisfied, in the first place, that the cost of material used on railroads has increased from 25 % to — much as 100 %, and every employé that is working for the Atlantic Coast Line Railroad Company to-day, as compared with 1901 and 1902, has had his salary increased from 7 % to 25 %. From my experience as an operating officer I am able to say that the expense of handling local or State traffic is greater than in handling interstate or through traffic. I should say that it costs at least 20 % or 25 % more to handle local than to handle through business. The reason for this is that in handling interstate business the freights are carried through without the additional expense of intrastate business which requires the handling, delivery and shifting, side-tracks and warehouses and men to handle the same.

80 With reference to the comparing phosphate freight with other heavy freights, the phosphate is the most expensive freight we handle. In the first place, it is a very hard material on the cars. We are compelled to handle it in cars so as to exclude moisture, and therefore must use box cars. It is not an infrequent occurrence for us to have cars burned every month by the miners loading hot rock into them. In the handling of the traffic, in order to save the miners demurrage on their stuff, they give us notice they will have boats in a port at a certain time, probably 15 or 20 days before the boat is due. We naturally put off delivery of the cars, under this notice, just as long as it is possible in order to get the phosphate to the port in time to load the boat. It frequently happens that there are three or four ships due about the same time. Of course the road cannot afford to run its cars to the mines 15 or 20 days ahead and hold them until the ships arrive. We wait until the last minute and, of course, that means extra service. The empties are run in, and about the time they are gotten there the miner has some of those cars ready to go back, and as soon as any of the cars are ready we commence to move them back. The engine and

crew that take a train down have to go back with it, to even up the power. Whenever we return a train south we must have one going north, so as to have engines at both ends of the line. Just about the time we have 200 or 300 cars to move probably the last train load will commence getting some of the loads going back on the ship, and we have to run light engines to take the loads back. Of course we try to give an engine going south a load. With three ships due at the same time, if you get the phosphate aboard you have about 600 cars tied up, and if the ships do not arrive on time the cars are tied up until they do arrive. From my actual experience we have held cars 15 or 20 days, and sometimes 30 days, for a ship and for which the phosphate miner paid no demurrage. Not only that, but it necessitates having switching engines at the mines. The phosphate may be loaded from three or four mines, and we have to have a crew and engine to give the mines regular
81 shifts. Sometimes we can load only five or six cars at a shift, and this requires the engine to go at certain hours, put in its empties and bring this out to the main line before being attached to a through crew. There are expenses attached to the port. It is necessary to keep an engine at the port to shift the cars from the ship; as the stuff is taken out the empties must by pulled out and loads put in.

Demurrage is charged upon some freights, but we have never charged upon phosphate. We have always allowed the miners 30 days before demurrage is charged. As a matter of fact, we have never charged them demurrage.

I have been engaged with railroad construction and am familiar with the mileage of the Atlantic Coast Line Railroad Company in Florida. I have been over and examined every mile of it. Taking that mileage as an entirety, in my judgment, if the money were economically, honestly and wisely expended, to-day, taking the terminals and everything into consideration, I suppose it could be replaced at a cost of $20,000 per mile. Relative values are higher to-day than formerly; the cost of material is higher; and the property over which these railroads are laid has increased in value; that is, if you had to reproduce them and recondemn to-day.

I understand from my experience and actual operation that the cost of operating a railroad for intrastate traffic, as separate and apart from interstate traffic, would be 25% additional; that is, if it cost 60% to operate all of the lines there should be added 25 for the cost of operation of its local or intrastate traffic, if it was all local traffic.

We are not charging in Florida the rate on lumber offered by what is known as the railroad standard tariff. We have not done so because the railroad commission, while fixing a rate, would not allow us to charge it. I was before the railroad commission with the traffic people when they asked to be allowed to increase the rate and the commission refused to allow it. They refused to permit us to charge the maximum they had fixed upon lumber.

82 Cross-examination by Mr. BARRS:

As to the rate per ton per mile from points on the Atlantic Coast Line to Savannah, you will have to get the traffic man to give you the exact figures. I do not carry them in my head.

My experience has not been wholly with foreign shipments. We handle a lot of interior shipments, but very little for Florida.

My testimony in regard to additional cost of transportation because of having to hold cars for ships was with reference to
83 shipments from Savannah and Port Tampa going by ship.

Q. Is it not a fact that if you were transporting phosphate we will say from a point on your line in Florida to another point in the State to be used for instance, for fertilizer works, where you would not have to hold cars, could you not afford to carry it for considerably less than you can afford to carry it now to Savannah and Port Tampa to be delivered to ships?

A. Mr. Barrs you can't handle it that way. We have had to-day the same question you have asked me. We have had as high as forty cars tied up for one fertilizer plant because they can't unload it. Now you are going to have the same proposition.

Q. Have you not the right to charge demurrage?

A. We have, provided you have ample facilities at the phosphate mines to store 50 or 60 loaded cars and take care of the business. If you can crowd the cars in you can charge, but we have not the facilities and we can't afford to build them, so we have to hold the traffic out until it can be taken care of.

Q. Where does this delay take place, at the mines or at the termination of the shipments?

A. At both, for instance if a miner is somewhat short of rock, we have to help him to get his shipment in. It may be the day before the ship sails that some of his rock has got to come from the mines to get to the ports. We have to handle that as we would a passenger train. We would run it at the rate of 25 miles, to save demurrage.

Q. I understood you to-day that you sometimes had to hold cars loaded with rock as much as thirty days?

A. Yes.

Q. This is at the port?

A. Yes. Sometimes of course we have to hold it out of the port if you block the port.

Q. You have the right to charge demurrage for that have you not?

A. No, sir, we have not, if we had we would charge it.

Q. You have not the right under the railroad commission rules to charge for demurrage on cars?

A. For demurrage, but we never charge for the phosphate.

Q. In other words, you have not exercised that right?

A. No.

84 Q. You do exercise it with practically all other freight?

A. Yes, practically all other freight. And the reason we

do not do it for the phosphate miner is the condition of the traffic. He has no place to put his phosphate. To his best judgment he has ordered the cars in accordance with phosphate. Of course the wind and tide regulate when the boat will get in.

Q. Then the man who takes his phosphate and has it delivered promptly has to pay the same freight as the man who delays you thirty days?

A. Yes.

Q. You said you did not know the rates from points on your road to Savannah and Port Tampa?

A. No.

Q. Have you any rate in effect to Jacksonville and Fernandina?

A. We have not to Jacksonville, because we do not handle any phosphate there, we could not take care of it.

Q. Is it not a fact that you do not handle it because you have not the rate?

A. No, sir, we do not handle it because we have no port to put it in.

Q. Isn't it a fact that they have plenty of water at Fernandina?

A. I think so.

Q. Is it not a fact that a very large proportion of the phosphate that goes out of Savannah goes out on 18 feet or less of water?

A. I do not know exactly what it goes out on. I know you can go out on 26 feet. The depth of water is what governs your harbor.

Q. If Jacksonville has 18 feet, for instance, and Fernandina has 30 feet, and there is any proportion of phosphate that goes from Savannah on 18 feet draft, why could not that go through Jacksonville, or if it goes on 30 feet, why could it not go through Fernandina?

A. That is up to the phosphate miner, we do not tell him where to ship his phosphate out.

Q. But you have no rate to Jacksonville or Fernandina?

A. I think there is a rate to Fernandina. We have handled phosphate at Fernandina. We have handled thousand- and thousands of tons at Fernandina. We have not handled in Jacksonville because we have not been able to.

85 Q. Taking points from which you ship to Savannah—what is the comparative distance from those points to Savannah and from those points to Fernandina?

A. If I had my table I could pretty well tell you. Phosphate going to Fernandina sometimes goes around by Waycross and Callahan and into Fernandina. That mileage would be pretty near the same as Savannah.

Q. Take the shortest route?

—. The shortest route would be Lake City around through Baldwin into Fernandina.

Q. How much less would be the distance to Fernandina than to Savannah?

A. I do not recollect the exact mileage from Fernandina to Lake City.

Q. Would not the shortest route to Fernandina over your road, for nearly all of your phosphate, be over your J. & S. W. branch to Jacksonville, thence to Fernandina?

A. I do not know that it is any shorter over the J. & S. W. Of course we have only acquired the J. & S. W. branch in the last forty days, but I do not think there would be much difference. It is about 80 miles from the phosphate territory when you get to Jacksonville. That is for the shortest haul. Go further down, you increase that mileage 75 miles.

Q. All of your testimony with reference to transporting phosphate is based on your experience with shipments either over your line out of the State into Georgia, or to Port Tampa, to be delivered to ships to go to foreign countries, is it not?

A. Yes, because we do not handle any other phosphate, except the little that that phosphate plant at Jacksonville used to get. It got a little phosphate occasionally, but outside of that there is nothing. That was the only plant in Florida that used any phosphate. They did not take care of 20 cars per year, so practically none was handled. They have been out of business for two years.

Q. Practically no phosphate being handled, according to your opinion, except shipments either foreign or interstate?

A. Yes.

Q. All your testimony is based on your experience with shipments either to Port Tampa going to foreign points by ship, or to go to Savannah and take the ship?

86 A. Mr. Barrs, it don't make any difference about your handling phosphate or other local freight, you have the same expense. You ask that question, and I simply judge because it is an interstate movement, the same expense would take place in handling phosphate as any other local business in the State of Florida, having to provide the same facilities. Because it is phosphate does not make it any cheaper.

Q. Mr. Denham, how does the business on the Coast Line in Florida for 1904 compare with the business for 1903?

A. There is an increase, as the expenses increase, and the expenses have incresed every year. You don't know that we went through a freeze a few years ago, and we robbed the property of every cent to keep it going, and the minute the property began to make a little money we had to make up four or five years' loss, to get it, so, we operated it, so while the earnings increased the expenses also increase,—increase beyond what they ought to.

Q. You give the percentage of expense for 1901 and 1902. 1901 is less, percentage is less?

A. Expenses are greater. 1901, 71 6/10; 1902, 68 7/10.

Q. Was there not a considerable reduction in the percentage of expenses to earnings in 1903 over 1904?

A. Your expenses go right along, as business increases expenses increases.

Witness was shown reports to the Florida railroad commission made by the Plant system of railroads to June 30th, 1902, and by the A. C. L. system to June 30th, 1903. His attention was called to the fact that the Plant system report showed $4,150,481.26 gross earnings from operation of lines in Florida for year ending June 30th, 1902, and that the A. C. L. report showed total gross earnings from operation of same lines in Florida for year ending June 30th, 1903, only $3,331,967.16.

Q. You have testified that the business done by the A. C. L. for the year ending June 30th, 1903, over its Florida lines, was considerably better than the business done by the Plant system over the same lines the year before. Will you please explain how it is that the A. C. L. reports more than $818,000. less gross earnings,
87 when they did a considerably better business?

A. I can explain that. You have not Georgia and North Carolina, which means a great deal more than that.

Q. This is for Florida?

A. I told you that up to July 1902 our earnings in Florida and expenses were kept separate, and they were operated as one railroad. If you take the expenses of Georgia and North Carolina and put Florida with it, the expenses decreases on that ratio.

Q. Is not that a report of the lines in Florida?

A. Report arrived at in that way.

Q. What is the percentage reported for 1903 in Florida?

A. That report is correct if it comes from our people. It is arrived at—the earnings—by taking the mileages if Florida as earning the same money as did Georgia or North Carolina, which is not the case by any means.

Q. How do you account for this report being made to the commission if it is not correct?

A. It is correct, taken as a whole. You know very well, as a business man, that we do not earn as much per mile in Florida as we do in Georgia.

Q. Do you have any more expenses in Georgia?

A. To a certain extent, it takes so much to run your train to keep the train up, but as you increase your earnings we have to increase the expenses.

Q. From your experience, would you not say that the percentage of expenses to earnings in 1904 will show less than for 1903?

A. I would not say for certain, because sometimes our expenses fluctuate. It depends on how many cars and engines you have to buy. Railroads don't last always, you know, and you have to buy cars and railroad iron to put back on it, and when you buy a foot of railroad iron it costs $1.00 for every foot you put down. Our railroads are 20 or 25 years old, and we have to relay them if we are to operate them. Cars wear out and engines wear out.

88 Redirect:

The Atlantic Coast Line is divided into more branches and short lines in Florida than in Georgia, and the same in South Carolina. The lines in Florida are comparatively new lines. Where a road is divided into numerous divisions it is more expensive to operate it than if not divided, and requires more service to operate the same mileage than it would if it were in a straight line. There are no two branch lines in Florida that pay operating expenses. For instance, we have the Florida Southern, S. & S. P. and St. Johns & Lake Eustis properties. In 1902 I think it cost 171 % to operate the St. Johns & Lake Eustis—71 % more to operate it than it earned.

Question by the COURT:

Is that the condition of the St. Johns & Lake Eustis now?

A. I doubt if it pays expenses now. The entire traffic of the St. Johns & Lake Eustis is oranges and I do not suppose we handled 25,000 boxes. That is the business, with a little merchandise and a few passengers, and there are 45 miles to maintain.

Recross:

As to the commission refusing to permit us to charge the lumber rates fixed by the commission I wish to say that I was here with the traffic people when they asked that question, and the commission stated that it had not been put in when it was allowed and they would not let them put it in now. I do not know whether any formal application was made. I know the question was asked, because it was discussed at the time. I think it was over a year ago. I do not recollect whether there was any regular application made in writing, but I know the question was asked and that it was refused. I personally heard one of the traffic men ask permission of the commissioners. I do not know of the Atlantic Coast Line asking permission of the commission to change rates fixed by the commission. I know the commission has cut down rates when they were in effect. Not the lumber rate, but other rates. I do not know that the road is charging a less rate on various arti-
89 cles than is allowed by the commission except on lumber, and that for the reasons I have stated, but there may be other rates.

Redirect.

Mr. Menzies was here at the time of the request to allow us to charge the rate on lumber fixed by the commission. We were having a meeting with the commissioners and it was in their office. Mr. Menzies was then and is now our general freight agent. I do not know now what we had under discussion.

In response to a question by the court the witness said: In the term "operating expenses" we include four general sub-divisions:

First, maintenance of way and structure, which includes all of the maintenance of the roadbed, bridges, etc. It does not include building new roads. When that is done we have to get a construction account. It does not include interest on the bonds. The taxes are not included in that. They are added afterwards At the time the Plant system was operating in Florida, prior to its consolidation with the Atlantic Coast Line, we kept each line separate. Now the Atlantic Coast Line does not keep the operation of any particular line separate, but we operate as an entire property from Richmond to Port Tampa—as an entirety as to earnings and expenses. It would cost from $20,000 to $25,000 per mile to replace the road today; that includes rolling-stock and everything.

Referring to the cash value of the property, I think we might be able to sell it for $10,000 per mile. It would not bring over 2 or 3% interest on $10,000 per mile at its present earnings. There are about 1265 miles in Florida. There is a total mileage in Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida of about 4,000 miles.

It costs more to handle intrastate than interstate traffic because when you have interstate business you can couple on to it and it goes right through; you do not have to employ any man to handle that business. The engine is coupled on and it takes it to destination. In handling intrastate business we have to stop and peddle along the road. It is picked up at one station and put
90 down at another, and we have to provide facilities for all that. We have to provide shelters, and the engines, crew and everything will cost more than if it were a through shipment. Any road that has big earning power has a big through business. It costs so much less to handle it than local business. One reason is that through business is in large bulk, while intrastate is in small parcels. The interstate is large and goes from Dunnellon to Savannah or Fernandina for ship. Through freight that could be handled in four hours would probably require twelve hours service to be handled locally. We might handle freight from Dunnellon to Savannah in one day, while locally it would take three or four days to get through. I cannot tell you the exact proportion of interstate and intrastate business in this State. The percentage ratios the expenses to the earnings, including interstate with intrastate business—every dollar that we make from all sources.

In stating the difference between local and domestic business, and the cost of domestic business being greater than through business, I wish to say that as to the ratio of costs being dependent upon carload lots, it would depend entirely upon the length of the movement, but local business does not move in solid carload lots. We have to take our local business as a whole; not the one commodity. If we were to handle interstate business and domestic business, neither in car lots, it would not cost any more if you could handle the domestic upon through trains, but local business is not allowed on the same trains with through business. We have local engines

and local crews for local business and they have to stop and peddle out the business, and the through trains go through within a certain time. Whether you have through trains depends on what the amount is. If you have not sufficient business for a through train it is handled locally. We do not have a train partly local and partly interstate. We concentrate the through freight at some point where we can put it on a through train, to make time.

The earnings in Florida are arrived at by taking the total earnings of the entire A. C. L. system and apportioning it on a mileage basis. As to the entire gross earnings of the line, Mr. Mc-
91 Cormick will have to answer. As to the mileage in Florida and the percentage of earnings credited thereon, Mr. McIver can tell you how that is arrived at.

Thereupon, the respondent, further to prove and maintain the said issue on its part, called as a witness R. S. McIver, who, being first duly sworn, testified as follows:

My name is R. S. McIver. I am 42 years old. I am auditor of the freight receipts of the Atlantic Coast Line Railroad Company, and have been since July 1, 1902. Prior to that time I was connected with the roads of the Plant system, which now compose the Atlantic Coast Line by consolidation, and was then auditor of both freight and passenger receipts. I have occupied that position since 1885. I handle freight earnings and have made a compilation of the freight earnings for the year ending June 30, 1904, I mean for Florida's intrastate business. The data and figures were taken from the original reports of the agents. The agents send their reports in monthly and I bind them every month as soon as I finish their examination. The figures that I now have are taken from the reports for twelve months. The freight earnings of the Atlantic Coast Line Railroad Company for Florida's intrastate business for the year ending June 30, 1904, were $871,926.41.

Cross-examination:

These figures do not include express. They are freight earnings. The express earnings for the year allotted to Florida were about $43,000 or $44,000.

The basis of the division of freight earnings is not by making the same ton mileage. You work the ton mileage in each State and then divide and take the actual ton mileage in Florida; that is simply for the expenses. Receipts are allotted to Florida lines on the basis of the tons one mile on the entire A. C. L. system.

The amount of freight receipts allotted to Florida does not represent the actual receipts for hauling freight in Florida, but is arrived at by taking the total number of tons of freight hauled one
92 mile on the entire A. C. L. system in Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama, and the entire freight receipts for the entire system for the year, and thereby

ascertaining the average rate per ton for hauling one mile all freight hauled on the system. We then take the actual number of tons of freight handled one mile in Florida and multiply that by the average rate received by the system and allot the amount so arrived at to the Florida lines as their earnings. This is the basis on which all of our statements are made.

We have some income from mail service, but I do not know what it is. No other sources of income are taken into consideration. We treat all phosphate shipments through Port Tampa as interstate and they are not included in these figures, nor are any phosphate shipments included.

And thereupon, the said respondent, further to prove and maintain the said issue on its part, called as a witness GEORGE S. LE GRAND, who, being first duly sworn, testified as follows:

My name is George S. Le Grand. I am 42 years old. I am auditor of passenger receipts for the Atlantic Coast Line Railroad Company, and have been since July 1, 1902. I have been connected with the Atlantic Coast Line Railroad Company since 1882, holding various positions in the clerical department—in the accounting department. I have made a compilation of the passenger earnings of the Florida business of the Atlantic Coast Line for the year ending June 30, 1904. I made same from our agents' reports and conductors' reports, of which I have charge. I filed them each month, some are bound and others are not. They are all filed together, however. The passenger earnings on intra-state business for the year ending June 30, 1904, were $678,326.80, which added to the freight earnings of $871,926.41 on intra-state business make a total of $1,550,253.21.

Cross-examination.

My figures include nothing but passenger business from points in Florida to points in Florida. I think the mail receipts are about $41,000.

93 I prepare the reports to the railroad commission, so far as the passenger rates are concerned. The report for the year 1904, for the entire system, has not been made. The report up to July, 1904, has been made but has not been filed.

And thereupon, the said respondent, further to prove and maintain the said issue on its part, called as a witness C. J. JOSEPH, who, being first duly sworn, testified as follows:

My name is C. J. Joseph; age, 43 years; I am tax agent of the second division of the Atlantic Coast Line Railroad Company. I am familiar with the tax payments of the company. On the entire property in Florida the company paid last year a taxation of $164,000. The State puts the valuation on the property. The gross

valuation, as I recollect, was $7,800,000. This does not include municipal taxation. This includes taxes on buildings used for mercantile purposes and those rented for wholesale purposes in Jacksonville.

Mr. R. S. McIver, who had previously been duly sworn, was then recalled by the respondent further to maintain the issue upon its part, and testified as follows:

The total cost of operation for 1904 is 56.7 % of the total freight and passenger earnings.

The total intrastate freight and passenger earnings for Florida for the year ending June 30, 1904, were $1,550,253.21. The total mileage in Florida is 1263.74 miles. Taking the cost of operation at 56.7 per cent., it would amount to $—; add to this the taxes paid, $162.928.23 and we will have a total of $—,—leaving the net earnings $508,331.41, which, at a valuation of $8,000. per mile, would equal 5.3 per cent., at a valuation of $9,000. per mile 4.47 per cent., and at a valuation of $10,000. per mile 4 2/100 per cent. Taking the cost of operation as 66.7 per cent., it would amount to $1,034,018.89; add to this the taxes paid, $162,928.23, we would have a total of $1,196,947.12,—leaving the net earnings $335,306.09 on a mileage of 1263.74, which, at a valuation of $8,000. per mile,
94 would equal 3.49 per cent., at a valuation of $9,000. 3.11 per cent., and at a valuation of $10.000. per mile 2.79 per cent., as the net profits received from the intrastate business done in Florida.

The entire earnings of the Atlantic Coast Line Railroad Company on all traffic of all classes in Florida, both intrastate and interstate, for year ending June 30, 1904, was as follows:

Freight earnings	$2,480,289.60
Passenger earnings	1,048,113.63
Mail	144,160.27
Express	115,633.46
Extra baggage and storage	12,142.69
Tracks, yards and terminals	50,329.20
Other sources	52,243.85
Making a total of	$3,903,012.70

In this statement no freight is credited to phosphate as an interstate movement.

Cross-examination:

The apportionment of Florida's part of phosphate rates to Savannah is on the basis of tons handled one mile. This does not refer to intrastate business, but in alloting the freight earnings we work from the tons handled in each State one mile, and divide the freight earnings on this percentage, thereby giving Florida its proportion.

As to whether the rate averages about one cent per ton per mile on all phosphate traffic, I can not say. The division for the State of Florida is made on the basis of tons one mile handled in the
95 State. The total receipts on shipments of freight from points in Florida to points beyond the State line are divided giving to Florida lines only the same rates per ton per mile that other lines get. As a matter of fact if it does cost more per ton per mile on some line other than in Florida, Florida is charged up with that portion of the expense; but on the contrary if it costs less on some other portion of the line, Florida gets the benefit of that decrease. I have made a statement of the earnings in the State of Florida, which is correct, taken from the original reports.

I have made no statement of the interstate business. I have on the intrastate, which is taken from the original reports. If the Florida lines were a separate company the receipts from freights would be very much less than they now are under the system of allotment under which the figures submitted have been made. The earnings in Georgia are considerably heavier than in Florida, and that is the way with other lines. The total freight receipts from phosphate hauled in Florida for the year ending June 30, 1904, were about $430,000.

Redirect:

The figures I have given as to freight received from phosphate shipments are all interstate. The entire movement is considered interstate. In giving the freight earned by Florida's intrastate business we take the agents' reports and take out the traffic that originated in and terminated in Florida, and that is the basis employed in dividing the earnings between the States to report to the various railroad commissions. It takes the entire receipts
96 from freight traffic on the entire line, and on the basis of the number of tons one mile handled in Florida it is apportioned to that State. That includes freight shipped from Florida exclusively, of every kind and description.

Recross-examination:

The raising and lowering of rates on phosphate in Florida to Port Tampa affects the receipts of the Virginia lines just as much as the Florida lines, according to our method of division, and the raising and lowering of rates in North Carolina affects just as much the per ton per mile the credit given to Florida as to North Carolina. It would be the same if we hauled oranges at so much per ton per mile.

Mr. C. J. JOSEPH, being recalled on the part of the respondent further to maintain the issue on its part, testified as follows:

Since I was last on the stand I have made investigation and find hat the total tax valuation of the properties of the Atlantic Coast

Line as rented or leased to others, outside of the property used strictly for railroad purposes, amounts in round numbers to $148,000., which includes the property leased for wholesale purposes in Jacksonville. The total property of the company in Jacksonville is assessed at $148.000.

97 And thereupon the said respondent rested its case.

Whereupon, the attorneys for the State of Florida on the relation of the attorney general and special counsel for the railroad commissioners, offered and filed in evidence the report of the Savannah, Florida and Western Railway Company to the railroad commission of the State of Florida, for the year ending June 30th, 1902, which is in the words and figures as follows:

(Here follows fac-simile (Exhibit A) marked pp. 98, 137, and 138.)

W A.C.L.

ANNUAL REPORT

OF THE

The Savannah, Florida & Western Ry Co.

TO THE

RAILROAD COMMISSION

OF THE

STATE OF FLORIDA

FOR THE YEAR ENDING JUNE 30, 1902.

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

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This statement should show the actual amount of earnings from the operation of the road during the year for the respective items mentioned. The fact that any part of such earnings has not, at the time of making the report, passed into the treasurer's hands should not preclude the same from being stated here.

It will be observed that this page is arranged to show what deductions are made from the gross receipts before stating the actual earnings from operations which pass to the "Income Account," page 31. The items of deductions called for are intended to be such moneys as in fact belong to shippers or passengers, and not to the reporting carrier, but which are temporarily in the carrier's hands.

"Commissions" are considered an expense and should not be deducted here. Under "Freight—Other repayments," cases of refund, for the purpose of equalizing rates upon export traffic with the rates at other cities, should be shown; large amounts of "Deductions, account of repayments, etc.," should be explained. The amounts from which deductions are to be made should be entered in the "Total receipts" column, and the net amounts, after deductions are subtracted, are to be shown in the last column; items from which no deductions are made are also to be stated in the last column.

The items from which earnings are derived, under the respective headings of "Passenger" and "Freight," indicate what should be stated for each, with the possible exception of "Stock Yards" and "Elevators." For these items the earnings on this page are only to be shown when directly connected with the operation of the road; also under "Other earnings from operation," the earnings from "Telegraph" and from "Rents not otherwise provided for," are *only to be stated when directly connected with the operation of the road*. If revenue is received from any of the items mentioned, through a tenant or otherwise, not directly connected with the operation of the road, such revenue should be entered under "*Miscellaneous Income*," page 41.

It should be specially observed that under "Other earnings from operation," the net credit balance, if any, of the accounts "Switching charges," "Car mileage," and "Hire of equipment," should be stated, provision being made respectively in accounts Nos. 32, 33, and 34, on page 43, for the entry of net balances paid for services or use of equipment of the character indicated. The net balance of each account should be closed into earnings or expenses, as the case may be, annually instead of monthly.

EXPLANATORY REMARKS.

EARNINGS FROM OPERATION—STATE OF FLORIDA.

ITEM.	TOTAL RECEIPTS.	DEDUCTIONS, ACCOUNT OF REPAYMENTS, ETC.	ACTUAL EARNINGS.
PASSENGER:			
Passenger Revenue,	834155 21		
Less Repayments—			
Tickets Redeemed,	}	28 188 02	
Excess Fares refunded,			
Other repayments,			
Total Deductions,		28 188 02	
TOTAL PASSENGER REVENUE,			805 967 19
Mail,			122 333 70
Express,			125 734 30
Extra Baggage and Storage,			7 878 09
Other items,			
TOTAL PASSENGER EARNINGS,			1 064 153 28
FREIGHT:			
Freight Revenue,	2 454 420 74		
Less Repayments—			
Overcharge to shippers,	}	78 221 99	
Other repayments,			
Total Deductions,		78 221 99	
TOTAL FREIGHT REVENUE,			2 376 248 75
Stock Yards,			
Elevators,			
Other items,			
TOTAL FREIGHT EARNINGS,			2 376 248 75
TOTAL PASSENGER AND FREIGHT EARNINGS,			3 440 402 03
OTHER EARNINGS FROM OPERATION:			
Switching Charges—Balance,			12 273 16
Car Mileage—Balance,			15 825 68
Hire of Equipment—Balance,			323 99
Telegraph Companies,			
Rents from Tracks, Yards, and Terminals—Page 41,			
Rents not otherwise provided for,			
Other sources,			31 072 94
TOTAL OTHER EARNINGS,			76 419 77
Total Gross Earnings from Operation—Florida.			3 516 821 80
TOTAL GROSS EARNINGS FROM OPERATION—ENTIRE LINE,			831 546 79

B A.C.L.

ANNUAL REPORT

OF THE

Florida Southern R. R. Co.

TO THE

RAILROAD COMMISSION

OF THE

STATE OF FLORIDA

FOR THE YEAR ENDING JUNE 30, 1902.

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

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It will be observed that this page is arranged to show what deductions are made from the gross receipts before stating the actual earnings from operations which pass to the "Income Account," page 31. The items of deductions called for are intended to be such moneys as in fact belong to shippers or passengers, and not to the reporting carrier, but which are temporarily in the carrier's hands.

"Commissions" are considered an expense and should not be deducted here. Under "Freight—Other repayments," cases of refund, for the purpose of equalizing rates upon export traffic with the rates at other cities, should be shown; large amounts of "Deductions, account of repayments, etc.," should be explained. The amounts from which deductions are to be made should be entered in the "Total receipts" column, and the net amounts, after deductions are subtracted, are to be shown in the last column; items from which no deductions are made are also to be stated in the last column.

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It should be specially observed that under "Other earnings from operation," the net credit balance, if any, of the accounts "Switching charges," "Car mileage," and "Hire of equipment," should be stated, provision being made respectively in accounts Nos. 32, 33, and 34, on page 43, for the entry of net balances paid for services or use of equipment of the character indicated. The net balance of each account should be closed into earnings or expenses, as the case may be, annually instead of monthly.

EXPLANATORY REMARKS.

EARNINGS FROM OPERATION—STATE OF FLORIDA.

ITEM.	TOTAL RECEIPTS.	DEDUCTIONS, ACCOUNT OF REPAYMENTS, ETC.	ACTUAL EARNINGS.
PASSENGER:			
Passenger Revenue,	1121465		
Less Repayments—			
Tickets Redeemed,		11704	
Excess Fares refunded,			
Other repayments,			
Total Deductions,			
TOTAL PASSENGER REVENUE,			1115922 07
Mail,			21 431 43
Express,			43 795 73
Extra Baggage and Storage,			960 49
Other items,			
TOTAL PASSENGER EARNINGS,			1512071 72
FREIGHT:			
Freight Revenue,	2797288 30		
Less Repayments—			
Overcharge to shippers,		39530	
Other repayments,			
Total Deductions,			
TOTAL FREIGHT REVENUE,			2757758 80
Stock Yards,			
Elevators,			
Other items,			
TOTAL FREIGHT EARNINGS,			
TOTAL PASSENGER AND FREIGHT EARNINGS,			4269830 52
OTHER EARNINGS FROM OPERATION:			
Switching Charges—Balance,	7407 97		
Car Mileage—Balance,	2202		
Hire of Equipment—Balance,			
Telegraph Companies,			
Rents from Tracks, Yards, and Terminals—Page 41,			
Rents not otherwise provided for,			
Other sources,	15032		
TOTAL OTHER EARNINGS,			25213 38
Total Gross Earnings from Operation—Florida,			4295044 90
TOTAL GROSS EARNINGS FROM OPERATION—ENTIRE LINE,			4295044 90

195 Whereupon, the attorneys for the State of Florida on the relation of the attorney general and special counsel for the railroad commissioners, offered and filed in evidence the report of the Florida Southern R. R. Company to the railroad commission of the State of Florida, for the year ending June 30th, 1902, which is in the words and figures as follows:

(Here follows fac-simile (Exhibit B) marked pp. 196, 233, and 234.)

C a. C. L.

ANNUAL REPORT

OF THE

Sanford and St. Petersburg Railroad Company

TO THE

RAILROAD COMMISSION

OF THE

STATE OF FLORIDA

FOR THE YEAR ENDING JUNE 30, 1902.

X + +

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

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It will be observed that this page is arranged to show what deductions are made from the gross receipts before stating the actual earnings from operations which pass to the "Income Account," page 31. The items of deductions called for are intended to be such moneys as in fact belong to shippers or passengers, and not to the reporting carrier, but which are temporarily in the carrier's hands.

"Commissions" are considered an expense and should not be deducted here. Under "Freight—Other repayments," cases of refund, for the purpose of equalizing rates upon export traffic with the rates at other cities, should be shown; large amounts of "Deductions, account of repayments, etc.," should be explained. The amounts from which deductions are to be made should be entered in the "Total receipts" column, and the net amounts, after deductions are subtracted, are to be shown in the last column; items from which no deductions are made are also to be stated in the last column.

The items from which earnings are derived, under the respective headings of "Passenger" and "Freight," indicate what should be stated for each, with the possible exception of "Stock Yards" and "Elevators." For these items the earnings on this page are only to be shown when directly connected with the operation of the road; also under "Other earnings from operation," the earnings from "Telegraph" and from "Rents not otherwise provided for," are *only to be stated when directly connected with the operation of the road*. If revenue is received from any of the items mentioned, through a tenant or otherwise, not directly connected with the operation of the road, such revenue should be entered under "*Miscellaneous Income*," page 41.

It should be specially observed that under "Other earnings from operation," the net credit balance, if any, of the accounts "Switching charges," "Car mileage," and "Hire of equipment," should be stated, provision being made respectively in accounts Nos. 32, 33, and 34, on page 43, for the entry of net balances paid for services or use of equipment of the character indicated. The net balance of each account should be closed into earnings or expenses, as the case may be, annually instead of monthly.

EXPLANATORY REMARKS.

EARNINGS FROM OPERATION—STATE OF FLORIDA.

ITEM.	TOTAL RECEIPTS.	DEDUCTIONS, ACCOUNT OF REPAYMENTS, ETC.	ACTUAL EARNINGS.
PASSENGER:			
Passenger Revenue,	964460		
Less Repayments—			
Tickets Redeemed,		25833	
Excess Fares refunded,			
Other repayments,			
Total Deductions,		25833	
TOTAL PASSENGER REVENUE,			938627
Mail,			97184
Express,			101884
Extra Baggage and Storage,			25723
Other items,			
TOTAL PASSENGER EARNINGS,			1163418
FREIGHT:			
Freight Revenue,	847362		
Less Repayments—			
Overcharge to shippers,		10628	
Other repayments,			
Total Deductions,		10628	
TOTAL FREIGHT REVENUE,			836734
Stock Yards,			
Elevators,			
Other items,			
TOTAL FREIGHT EARNINGS,			836734
TOTAL PASSENGER AND FREIGHT EARNINGS,			1401915
OTHER EARNINGS FROM OPERATION:			
Switching Charges—Balance,			6635
Car Mileage—Balance,			
Hire of Equipment—Balance,			
Telegraph Companies,			
Rents from Tracks, Yards, and Terminals—Page 41,			
Rents not otherwise provided for,			
Other sources,			20770
TOTAL OTHER EARNINGS,			27405
Total Gross Earnings from Operation—Florida,			1429320
TOTAL GROSS EARNINGS FROM OPERATION—ENTIRE LINE,			1429320

291 Whereupon, the attorneys for the State of Florida on the relation of the attorney general and special counsel for the railroad commissioners, offered and filed in evidence the report of the Sanford and St. Petersburg R. R. Company to the railroad commission of the State of Florida, for the year ending June 30, 1902, which was in the words and figures as follows :

(Here follows fac-simile (Exhibit C) marked pp. 292, 329 and 330.)

ANNUAL REPORT

OF THE

Florida Midland Railroad Co.

TO THE

RAILROAD COMMISSION

OF THE

STATE OF FLORIDA

FOR THE YEAR ENDING JUNE 30, 1902.

386 1/2

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

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"Commissions" are considered an expense and should not be deducted here. Under "Freight—Other repayments," cases of refund, for the purpose of equalizing rates upon export traffic with the rates at other cities, should be shown; large amounts of "Deductions, account of repayments, etc.," should be explained. The amounts from which deductions are to be made should be entered in the "Total receipts" column, and the net amounts, after deductions are subtracted, are to be shown in the last column; items from which no deductions are made are also to be stated in the last column.

The items from which earnings are derived, under the respective headings of "Passenger" and "Freight," indicate what should be stated for each, with the possible exception of "Stock Yards" and "Elevators." For these items the earnings on this page are only to be shown when directly connected with the operation of the road; also under "Other earnings from operation," the earnings from "Telegraph" and from "Rents not otherwise provided for," are *only to be stated when directly connected with the operation of the road*. If revenue is received from any of the items mentioned, through a tenant or otherwise, not directly connected with the operation of the road, such revenue should be entered under "*Miscellaneous Income*," page 41.

It should be specially observed that under "Other earnings from operation," the net credit balance, if any, of the accounts "Switching charges," "Car mileage," and "Hire of equipment," should be stated, provision being made respectively in accounts Nos. 32, 33, and 34, on page 43, for the entry of net balances paid for services or use of equipment of the character indicated. The net balance of each account should be closed into earnings or expenses, as the case may be, annually instead of monthly.

EXPLANATORY REMARKS.

EARNINGS FROM OPERATION—STATE OF FLORIDA.

ITEM.	TOTAL RECEIPTS.	DEDUCTIONS, ACCOUNT OF REPAYMENTS, ETC.	ACTUAL EARNINGS.
PASSENGER:			
Passenger Revenue,			
Less Repayments—			
Tickets Redeemed,			
Excess Fares refunded,			
Other repayments,			
Total Deductions,			
TOTAL PASSENGER REVENUE,			5688
Mail,			
Express,			791
Extra Baggage and Storage,			
Other items,			
TOTAL PASSENGER EARNINGS,			6479
FREIGHT:			
Freight Revenue,	359386		
Less Repayments—			
Overcharge to shippers,		3141	
Other repayments,			
Total Deductions,		3141	
TOTAL FREIGHT REVENUE,			356245
Stock Yards,			
Elevators,			
Other items,			
TOTAL FREIGHT EARNINGS,			356245
TOTAL PASSENGER AND FREIGHT EARNINGS,			362724
OTHER EARNINGS FROM OPERATION:			
Switching Charges—Balance,			
Car Mileage—Balance,			
Hire of Equipment—Balance,			
Telegraph Companies,			
Rents from Tracks, Yards, and Terminals—Page 41,			
Rents not otherwise provided for,			1715
Other sources,			
TOTAL OTHER EARNINGS,			1715
Total Gross Earnings from Operation—Florida,			364439
TOTAL GROSS EARNINGS FROM OPERATION—ENTIRE LINE,			364439

386 Whereupon, the attorneys for the State of Florida on the relation of the attorney general and special counsel for the railroad commissioners, offered and filed in evidence the report of the Florida Midland R. R. Company to the railroad commission of the State of Florida, for the year ending June 30th, 1902, which is in the words and figures as follows:

(Here follows fac-simile (Exhibit D) marked pp. 386½, 423 and 424.)

ANNUAL REPORT

OF THE

St. Johns and Lake Eustis Railroad

TO THE

RAILROAD COMMISSION

OF THE

STATE OF FLORIDA

FOR THE YEAR ENDING JUNE 30, 1902.

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 34," where a brief explanation should be given why specific data called for can not be returned *exactly as requested*.

This statement should show the actual amount of earnings from the operation of the road during the year for the respective items mentioned. The fact that any part of such earnings has not, at the time of making the report, passed into the treasurer's hands should not preclude the same from being stated here.

It will be observed that this page is arranged to show what deductions are made from the gross receipts before stating the actual earnings from operations which pass to the "Income Account," page 31. The items of deductions called for are intended to be such moneys as in fact belong to shippers or passengers, and not to the reporting carrier, but which are temporarily in the carrier's hands.

"Commissions" are considered an expense and should not be deducted here. Under "Freight—Other repayments," cases of refund, for the purpose of equalizing rates upon export traffic with the rates at other cities, should be shown; large amounts of "Deductions, account of repayments, etc.," should be explained. The amounts from which deductions are to be made should be entered in the "Total receipts" column, and the net amounts, after deductions are subtracted, are to be shown in the last column; items from which no deductions are made are also to be stated in the last column.

The items from which earnings are derived, under the respective headings of "Passenger" and "Freight," indicate what should be stated for each, with the possible exception of "Stock Yards" and "Elevators." For these items the earnings on this page are only to be shown when directly connected with the operation of the road; also under "Other earnings from operation," the earnings from "Telegraph" and from "Rents not otherwise provided for," are *only to be stated when directly connected with the operation of the road*. If revenue is received from any of the items mentioned, through a tenant or otherwise, not directly connected with the operation of the road, such revenue should be entered under "*Miscellaneous Income*," page 41.

It should be specially observed that under "Other earnings from operation," the net credit balance, if any, of the accounts "Switching charges," "Car mileage," and "Hire of equipment," should be stated, provision being made respectively in accounts Nos. 32, 33, and 34, on page 43, for the entry of net balances paid for services or use of equipment of the character indicated. The net balance of each account should be closed into earnings or expenses, as the case may be, annually instead of monthly.

EXPLANATORY REMARKS.

EARNINGS FROM OPERATION—STATE OF FLORIDA.

ITEM.	TOTAL RECEIPTS.	DEDUCTIONS, ACCOUNT OF REPAYMENTS, ETC.	ACTUAL EARNINGS.
PASSENGER:			
Passenger Revenue,	284738		
Less Repayments—			
Tickets Redeemed,		2095	
Excess Fares refunded,			
Other repayments,			
Total Deductions,		2095	
TOTAL PASSENGER REVENUE,			282643
Mail,			214036
Express,			80224
Extra Baggage and Storage,			4175
Other items,			
TOTAL PASSENGER EARNINGS,			581078
FREIGHT:			
Freight Revenue,	1014564		
Less Repayments—			
Overcharge to shippers,		22551	
Other repayments,			
Total Deductions,		22551	
TOTAL FREIGHT REVENUE,			992013
Stock Yards,			
Elevators,			
Other items,			
TOTAL FREIGHT EARNINGS,			992013
TOTAL PASSENGER AND FREIGHT EARNINGS,			1573091
OTHER EARNINGS FROM OPERATION:			
Switching Charges—Balance,			
Car Mileage—Balance,			
Hire of Equipment—Balance,			
Telegraph Companies,			
Rents from Tracks, Yards, and Terminals—Page 41,			
Rents not otherwise provided for,			
Other sources,			1706
TOTAL OTHER EARNINGS,			1706
Total Gross Earnings from Operation—Florida,			1574797
TOTAL GROSS EARNINGS FROM OPERATION—ENTIRE LINE,			1574797

479 Whereupon, the attorneys for the State of Florida on the relation of the attorney general and special counsel for the railroad commissioners, offered and filed in evidence the report of the St. Johns and Lake Eustis R. R. Company to the railroad commission of the State of Florida, for the year ending June 30th, 1902, which is in the words and figures as follows:

(Here follows fac-simile (Exhibit E) marked pp. 480, 517 and 518.)

7 A. C. L.

ANNUAL REPORT

OF THE

Atlantic Coast Line Railroad Company.

TO THE

RAILROAD COMMISSION

OF THE

STATE OF FLORIDA

FOR THE YEAR ENDING JUNE 30, 1903.

X X X X X

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 30," where a brief explanation should be given why specific data called for can not be returned *exactly as requested*.

The entries in the "Income Account" should be taken from the pages indicated after the items called for. Where no pages are referred to, the entries must be taken from the books of the company. It should be remembered that this page is made up on the basis of *accruals*, and every item should be given as *accrued* when that is possible.

Under "Other deductions," include such items as are properly regarded as fixed charges which may not be assigned to any of the preceding titles under "Deductions from Income." An itemized statement should also be furnished below (page 30) of any amount returned against this caption.

Under "Other payments from net income," give only such items as are properly regarded as earnings to the stockholders of the road, other than earnings which are reported as "Dividends." In every case a full explanation should be given below (page 30) of the item entered against this heading.

Under "Additions for Year," there should be given amounts transferred from other accounts to the surplus; or amounts representing an increase in resources not properly assignable to the earnings of property operated during the year covered by this report, or to income accruing on investments during the year covered by this report.

Under "Deductions for Year," there should appear amounts transferred from the surplus as shown in "Profit and Loss" on "General Balance Sheet," for the year ending June 30, 1902, to other accounts; or amounts written off resulting from adjustments; or payments not properly chargeable to the operations of property during the year covered by this report.

If amounts are returned as "Additions for Year" or "Deductions for Year," an itemized statement should be given in the blank space below on this page (30).

In order to discover the "Profit and Loss" "For entry on 'General Balance Sheet,' page 51" (or 49), the "Profit and Loss" from last year's balance sheet should be combined with the surplus or deficit arising from the operations covered by this year's report. To this total should be added the amount returned against "Additions for Year;" or from it should be deducted the amount returned against "Deductions for Year." The result will be the "Profit and Loss" to be carried to the "General Balance Sheet," page 51 (or 49).

EXPLANATORY REMARKS.

Other deductions from Income

James River Branch	Deficit	6440.16
Farm Loan	"	15431.70
Ft. White & Southern Ry.	"	188.74
		$22060.60

INCOME ACCOUNT.

[FOR ROADS MAKING OPERATING REPORTS.]

Gross Earnings from Operation—Page 35,	19676 14627	
Less Operating Expenses—Page 45,	11859 26792	
INCOME FROM OPERATION,		7787 14725
DEFICIT,		
Dividends on Stocks Owned—Page 37,	369 345 00	
Interest on Bonds Owned—Page 39,	76 74668	
Miscellaneous Income—less Expenses—Page 41,	306 63766	
INCOME FROM OTHER SOURCES,		1152 95234
TOTAL INCOME,		8940 10162
DEFICIT,		
DEDUCTIONS FROM INCOME:		
Interest on Funded Debt ACCRUED—Page 23,	5149 10648	
Interest on Interest-bearing Current Liabilities ACCRUED, not otherwise provided for,	15 60000	
Interest on Real Estate Mortgages,		
Rents Paid for Lease of Road—Page 47, A,	43 27600	
Taxes—Page 79, A,	702 00000	
Permanent Improvements—Page 29,		
Other Deductions,	22 06060	
TOTAL DEDUCTIONS FROM INCOME,		5932 04308
NET INCOME,		3008 05854
DEFICIT,		
Dividends, 5 per cent, Common Stock—Page 17,	1620 00000	
Dividends, per cent, Preferred Stock—Page 17,	94 07500	
Other Payments from Net Income,		
TOTAL,		1714 07500
Surplus from Operations of Year ending June 30, 1903,		1293 98354
Deficit from Operations of Year ending June 30, 1903,		
Surplus on June 30, 1902, [From "General Balance Sheet," 1902 Report.]	3130 12925	
Deficit on June 30, 1902, [From "General Balance Sheet," 1902 Report.]	9619 15699	12750 08624
Conviction of value of property acquired with other roads		1904 06978
Additions for Year,		357 90237
Deductions for Year,		
		1146 97741
SURPLUS ON JUNE 30, 1903, [For entry on "General Balance Sheet," Page 51.]		
DEFICIT ON JUNE 30, 1903, [For entry on "General Balance Sheet," Page 49.]		

ADDITIONS TO PROFIT AND LOSS ACCOUNT

FOR YEAR ENDING JUNE 30TH, 1903.

ADDITIONS:		
Profit on sale of Tifton & Moultrie R.R.	$10,702.50	
Premium on sundry stocks and bonds sold,	101,831.73	
Premium on 85,000 shares common stock sold	2,123,852.62	
Refund by U. S. Government of errneous deduction made during Spanish war on account of M. & O. land grant	4,748.10	
Southern Express reports collected since July 1st,1902,applicable to prior period,	79,833.82	
Exchange of F.S.R.R.and S.& St.P.R.R.bonds,	242,688.83	
Sundry accounts closed out	7,417.93	2,571,075.53
DEDUCTIONS:		
Interest on bonds charged since July 1st, 1902, applicable to prior period,	47,716.66	
Consolidated expenses,	54,161.57	
Belt Line Ry.-50% of old bills charged off,	11,338.03	
Property owned jointly with L.& N.R.R.Co.,	1,622.33	
Reductions in book value of L.& N.R.R.Co. stock	5,000,000.00	
Other accounts charged off,	35,329.31	5,150,167.90
NET DEDUCTION,		2,579,092.37

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This statement should show the actual amount of earnings from the operation of the road during the year for the respective items mentioned. The fact that any part of such earnings has not, at the time of making the report, passed into the treasurer's hands should not preclude the same from being stated here.

It will be observed that this page is arranged to show what deductions are made from the gross receipts before stating the actual earnings from operations which pass to the "Income Account," page 31. The items of deductions called for are intended to be such moneys as in fact belong to shippers or passengers, and not to the reporting carrier, but which are temporarily in the carrier's hands.

"Commissions" are considered an expense and should not be deducted here. Under "Freight—Other repayments," cases of refund, for the purpose of equalizing rates upon export traffic with the rates at other cities, should be shown; large amounts of "Deductions, account of repayments, etc.," should be explained. The amounts from which deductions are to be made should be entered in the "Total receipts" column, and the net amounts, after deductions are subtracted, are to be shown in the last column; items from which no deductions are made are also to be stated in the last column.

The items from which earnings are derived, under the respective headings of "Passenger" and "Freight," indicate what should be stated for each, with the possible exception of "Stock Yards" and "Elevators." For these items the earnings on this page are only to be shown when directly connected with the operation of the road; also under "Other earnings from operation," the earnings from "Telegraph" and from "Rents not otherwise provided for," are *only to be stated when directly connected with the operation of the road.* If revenue is received from any of the items mentioned, through a tenant or otherwise, not directly connected with the operation of the road, such revenue should be entered under "*Miscellaneous Income*," page 41.

It should be specially observed that under "Other earnings from operation," the net credit balance, if any, of the accounts "Switching charges," "Car mileage," and "Hire of equipment," should be stated, provision being made respectively in accounts Nos. 32, 33, and 34, on page 43, for the entry of net balances paid for services or use of equipment of the character indicated. The net balance of each account should be closed into earnings or expenses, as the case may be, annually instead of monthly. "Car mileage—balance," is to be construed as including per diem receipts for the use of freight cars.

EXPLANATORY REMARKS.

EARNINGS FROM OPERATION—STATE OF FLORIDA.

ITEM.	TOTAL RECEIPTS.	DEDUCTIONS, ACCOUNT OF REPAYMENTS, ETC.	ACTUAL EARNINGS.
PASSENGER:			
Passenger Revenue,	7574009		
Less Repayments—			
Tickets Redeemed,			
Excess Fares refunded,			
Other repayments,			
Total Deductions,		8027 51	
TOTAL PASSENGER REVENUE,		1048113 69	731371 57
Mail,		144160 27	143390 03
Express,		113633 46	89761 33
Extra Baggage and Storage,		12142 67	7173 87
Other items,		52343 85	
TOTAL PASSENGER EARNINGS,		1372393 70	986876 38
FREIGHT:			
Freight Revenue,	2280562 48		
Less Repayments—			
Overcharge to shippers,		34472 75	
Other repayments,			
Total Deductions,			
TOTAL FREIGHT REVENUE,		2450289 60	2246387 73
Stock Yards,			
Elevators,			
Other items,			
TOTAL FREIGHT EARNINGS,			2246387 73
TOTAL PASSENGER AND FREIGHT EARNINGS,			3233 18631
OTHER EARNINGS FROM OPERATION:			
Switching Charges—Balance,			
Car Mileage—Balance,			
Hire of Equipment—Balance,			1997 79
Telegraph Companies,			21357 52
Rents from Tracks, Yards, and Terminals—Page 41,			
Rents not otherwise provided for,			
Other sources,			75345 54
TOTAL OTHER EARNINGS,			98680 85
Total Gross Earnings from Operation—Florida,		3703012 70	3331 96716
TOTAL GROSS EARNINGS FROM OPERATION—ENTIRE LINE,			19676746 27

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

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METHODS OF OBTAINING AVERAGES INDICATED BY NUMBERED ITEMS.

*4. *Average Distance Carried:*—Divide "3. Number of passengers carried one mile" by "1. Number of passengers carried earning revenue."

†6. *Average Amount Received from Each Passenger:*—Divide "5. Total passenger *revenue*" by "1. Number of passengers carried *earning revenue*."

†7. *Average Receipts per Passenger per Mile:*—Divide "5. Total passenger *revenue*" by "2. Number of passengers carried one mile."

†10. *Passenger Earnings per Train Mile:*—Divide "8. Total passenger *earnings*" by the sum of "42. Mileage of revenue passenger trains" and "45. Mileage of revenue mixed trains."

*14. *Average Distance Haul of One Ton:*—Divide "13. Number of tons carried one mile" by "11. Number of tons carried of freight earning revenue."

†16. *Average Amount Received for Each Ton of Freight:*—Divide "15. Total freight *revenue*" by "11. Number of tons carried of freight earning revenue."

†17. *Average Receipts per Ton per Mile:*—Divide "15. Total freight *revenue*" by "13. Number of tons carried one mile."

†20. *Freight Earnings per Train Mile:*—Divide "18. Total freight *earnings*" by the sum of "46. Mileage of revenue freight trains" and "45. Mileage of revenue mixed trains."

†23. *Gross Earnings from Operation per Train Mile:*—Divide "21. Gross earnings from operation" by "49. Total revenue train mileage."

†26. *Operating Expenses per Train Mile.*—Divide "24. Operating expenses" by "49. Total revenue train mileage."

*30. *Average Number of Passenger Cars per Train Mile:*—Divide "29. Mileage of passenger cars" by the sum of "42. Mileage of revenue passenger trains" and "45. Mileage of revenue mixed trains."

31. *Average Number of Passengers per Train Mile:*—Divide "3. Number of passengers carried one mile" by the sum of "42. Mileage of revenue passenger trains" and "45. Mileage of revenue mixed trains."

*36. *Average Number of Freight Cars per Train Mile:*—Divide total mileage of freight cars (Items 32, 33, 34, 35) by the sum of "46. Mileage of revenue freight trains" and "45. Mileage of revenue mixed trains."

*37. *Average Number of Loaded Cars per Train Mile:*—Divide total mileage of loaded freight cars (Items 32, 33) by the sum of "46. Mileage of revenue freight trains" and "45. Mileage of revenue mixed trains."

*38. *Average Number of Empty Cars per Train Mile:*—Divide total mileage of empty freight cars (Items 34, 35) by the sum of "46. Mileage of revenue freight trains" and "45. Mileage of revenue mixed trains."

*39. *Average Number of Tons of Freight per Train Mile:*—Divide "13. Number of tons carried one mile" by the sum of "46. Mileage of revenue freight trains" and "45. Mileage of revenue mixed trains."

*43. *Average Number of Tons of Freight per Loaded Car Mile:*—Divide "12. Number of tons carried one mile" by total mileage of loaded freight cars (Items 32, 33).

*41. *Average Mileage Operated during Year:*—This item should fairly represent the mean of the mileage operated during the year (including "Line operated under trackage rights"), which should be used in obtaining the seven "per mile of road" items, Nos. 3, 9, 13, 19, 22, 25, and 28. If but slight changes occurred, "Total mileage operated" (single track) may be used.

*Two (2) decimal figures required. †Five (5) decimal figures required.

CAR MILEAGE, ETC.:

The mileage of caboose cars should be included in the "mileage of empty freight cars."

CLASSIFICATION OF TRAIN MILEAGE:

Train mileage is divided into two general classes—revenue-train mileage and nonrevenue-train mileage. Revenue-train mileage is subdivided into passenger-train mileage, freight-train mileage, and mixed-train mileage.

Passenger-train mileage embraces the mileage of trains run to transport revenue-earning passengers, and to carry baggage, mail, express matter, milk, and other articles earning revenue which is classed as passenger earnings; provided such trains do not regularly include a car or cars devoted exclusively or principally to revenue freight business.

When one or more milk cars are hauled in a passenger train the mileage of that train should be considered as passenger-train mileage.

Freight-train mileage embraces the mileage of trains run to transport revenue-earning freight, which do not regularly include a car or cars devoted exclusively or principally to revenue passenger business; and, also, the mileage of trains consisting of empty cars, and of trains consisting of a locomotive and a caboose, running light between terminal stations, on account of the greater tonnage being in one direction.

When milk cars or express cars are hauled in a through or fast freight train, and their earnings are classed as freight earnings, the mileage of the train should be considered as freight-train mileage.

Freight trains that haul no passenger-service equipment, but transport passengers in a caboose, are not mixed trains, and their mileage should be treated as freight-train mileage.

Mixed-train mileage embraces the mileage of trains run to transport both passengers and freight earning revenue in cars, each of which is devoted exclusively or principally to either passenger business or freight business.

Nonrevenue-train mileage embraces the mileage of all trains not directly connected with the earning of revenue, such as—

(*a*) Trains of the passenger class, such as pay trains, official trains, complimentary special trains, and trains run to convey employees to and from shops.

(*b*) Trains of the freight class, such as material and supply trains.

(*c*) Trains of the work class, such as gravel trains, ballast trains, construction trains, wrecking trains, repair trains, snowplows, and flangers.

RULES FOR COMPUTING TRAIN MILEAGE, ETC.:

1. Revenue train mileage should be based on the actual distance run between terminals and computed from the official time-table or distance table, the same as passenger-mileage, ton-mileage, and car-mileage.
2. Revenue passenger trains and revenue mixed trains may incidentally carry private cars, official cars, work or service cars, or cars of related classes, and revenue freight trains may incidentally carry cars containing railway material and supplies or other freight which does not earn revenue, but whole trains of such cars should be regarded as nonrevenue trains and classed accordingly.
3. The mileage of nonrevenue trains should be based on the actual distance run between terminals. When work trains are run between terminals and not ordered to work at some specified point or within specified working limits, they should be allowed the actual mileage made the same as any other class of trains. When ordered to run to a certain point to work at that point or within specified working limits, they should be allowed the actual mileage made while under running orders, and in addition an arbitrary mileage of 6 miles per hour for the time working at the point or within the working limits named.
4. Each train and each section of a train run by a separate train crew should be considered a separate train, whether hauled by one or more locomotives for either the whole distance or a part of the distance between the train terminals. There should be nothing added to this distance to cover running from roundhouse to terminal, doubling hills, running for water, switching, or other work at way stations, or for the service of helper or pusher engines, or the extra engines on double or triple head trains.
5. Helping locomotive mileage embraces the mileage made by locomotives while pushing, double-heading, or in any similar way assisting passenger trains, freight trains, mixed trains, or nonrevenue trains; also the additional loaded mileage made in doubling hills. Helping mileage of locomotives should be based on the actual distance made with trains in helping service or in doubling hills.

EXPLANATORY REMARKS.

TRAFFIC AND MILEAGE STATISTICS—STATE OF FLORIDA.

ITEM.	COLUMN FOR NUMBER PASSENGERS, TONNAGE, CAR MILEAGE, NUMBER CARS, ETC.	COLUMNS FOR REVENUE AND RATES. Dollars.	Cts.	Mills.
PASSENGER TRAFFIC:				
1. Number of passengers carried earning revenue,	765193 —			
2. Number of passengers carried one mile,	30635029 —			
3. Number of passengers carried one mile per mile of road,	24964 —			
4. Average distance carried, miles,	4004			
5. Total passenger *revenue*—Page 35,		751371	39	
6. Average amount received from each passenger,			98	137
7. Average receipts per passenger per mile,			02	452
8. Total passenger *earnings*—Page 35,		986896	58	
9. Passenger *earnings* per mile of road,		804	21	
10. Passenger *earnings* per train mile,				
FREIGHT TRAFFIC:				
11. Number of tons carried of freight earning revenue—Page 63,	2203348 —			
12. Number of tons carried one mile,	176436823 —			
13. Number of tons carried one mile per mile of road,	138887 —			
14. Average distance haul of one ton, miles,	·7735			
15. Total freight *revenue*—Page 35,		2246389	73	
16. Average amount received for each ton of freight.		1	01	953
17. Average receipts per ton per mile,			01	318
18. Total freight *earnings*—Page 35,		2246389	73	
19. Freight *earnings* per mile of road,		1830	56	
20. Freight *earnings* per train mile,				
TOTAL TRAFFIC:				
21. Gross earnings from operation—Page 35,		3331967	16	
22. Gross earnings from operation per mile of road,		2715	19	
23. Gross earnings from operation per train mile,				
24. Operating expenses—Page 45,		1949893	90	
25. Operating expenses per mile of road,		1597	09	
26. Operating expenses per train mile,				
27. Income from operation—Page 31,		1382073	26	
28. Income from operation per mile of road,		1126	23	
CAR MILEAGE, ETC.:				
29. Mileage of passenger cars,	—			
30. Average number of passenger cars per train mile,				
31. Average number of passengers per train mile,	—			
32. Mileage of loaded freight cars—North or East,	—			
33. Mileage of loaded freight cars—South or West,	—			
34. Mileage of empty freight cars—North or East,	—			
35. Mileage of empty freight cars—South or West,	—			
36. Average number of freight cars per train mile,				
37. Average number of loaded cars per train mile,				
38. Average number of empty cars per train mile,				
39. Average number of tons of freight per train mile,				
40. Average number of tons of freight per loaded car mile,				
41. Average mileage operated during year,	122716			
TRAIN MILEAGE:	Miles.	Miles.		
42. Mileage of revenue passenger trains,	* * *			
43. Mileage of locomotives employed in "helping" passenger trains,	—	*	*	*
44. Percentage of "helping" to revenue train mileage, per cent,		*	*	*
45. Mileage of revenue mixed trains,	* * *			
46. Mileage of revenue freight trains,	* * *			
47. Mileage of locomotives employed in "helping" mixed and freight trains,	—	*	*	*
48. Percentage of "helping" to revenue train mileage, per cent,		*	*	*
49. TOTAL REVENUE TRAIN MILEAGE,	* * *			
50. Mileage of nonrevenue trains,	* * *			

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

There should appear on the opposite page ***sufficient notation*** to indicate that none of the questions asked has been overlooked. The word "None" may be used against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 61B," where a brief explanation should be given why specific data called for can not be returned *exactly as requested*.

See "Instructions," page 60.

EXPLANATORY REMARKS.

TRAFFIC AND MILEAGE STATISTICS—ENTIRE LINE.

ITEM.	COLUMN FOR NUMBER PASSENGERS, TONNAGE, CAR MILEAGE, NUMBER CARS, ETC.	COLUMNS FOR REVENUE AND RATES. Dollars.	Cts.	Mills.
PASSENGER TRAFFIC:				
1. Number of passengers carried earning revenue,	3728033 —			
2. Number of passengers carried one mile,	157075477 —			
3. Number of passengers carried one mile per mile of road,	37951 —			
4. Average distance carried, miles,	42 13			
5. Total passenger *revenue*—Page 35,		3853186	64	
6. Average amount received from each passenger,			103	357
7. Average receipts per passenger per mile,			02	453
8. Total passenger *earnings*—Page 35,		5020055	11	
9. Passenger *earnings* per mile of road,		1212	72	
10. Passenger *earnings* per train mile,			46	880
FREIGHT TRAFFIC:				
11. Number of tons carried of freight earning revenue—Page 63,	7674271 —			
12. Number of tons carried one mile,	1068277144 —			
13. Number of tons carried one mile per mile of road,	25-8108 —			
14. Average distance haul of one ton, miles,	139 20			
15. Total freight *revenue*—Page 35,		14039935	79	
16. Average amount received for each ton of freight,			1 82	948
17. Average receipts per ton per mile,			01	314
18. Total freight *earnings*—Page 35,		14039935	79	
19. Freight *earnings* per mile of road,		3392	21	
20. Freight *earnings* per train mile,		2	10	000
TOTAL TRAFFIC:				
21. Gross earnings from operation—Page 35,		19676746	27	
22. Gross earnings from operation per mile of road,		4754	13	
23. Gross earnings from operation per train mile,			1 68	414
24. Operating expenses—Page 45,		11889596	99	
25. Operating expenses per mile of road,		2872	66	
26. Operating expenses per train mile,			1 01	763
27. Income from operation—Page 31,		7787149	28	
28. Income from operation per mile of road,		1881	46	
CAR MILEAGE, ETC.:				
29. Mileage of passenger cars,	27845112 —			
30. Average number of passenger cars per train mile,	4 82			
31. Average number of passengers per train mile,	27 —			
32. Mileage of loaded freight cars—North or East,	55 532 847 —			
33. Mileage of loaded freight cars—South or West,	40 105 503 —			
34. Mileage of empty freight cars—North or East,	15481 257 —			
35. Mileage of empty freight cars—South or West,	30955 699 —			
36. Average number of freight cars per train mile,	21 25			
37. Average number of loaded cars per train mile,	1430			
38. Average number of empty cars per train mile,	695			
39. Average number of tons of freight per train mile,	159 18			
40. Average number of tons of freight per loaded car mile,	1117			
41. Average mileage operated during year,	413887			
	MILES.	MILES.		
TRAIN MILEAGE:				
42. Mileage of revenue passenger trains,	* * *	4997740		
43. Mileage of locomotives employed in "helping" passenger trains,	—	* * *		
44. Percentage of "helping" to revenue train mileage, per cent,		* * *		
45. Mileage of revenue mixed trains,	* * *	780434		
46. Mileage of revenue freight trains,	* * *	5905391		
47. Mileage of locomotives employed in "helping" mixed and freight trains,	—	* * *		
48. Percentage of "helping" to revenue train mileage, per cent,		* * *		
49. TOTAL REVENUE TRAIN MILEAGE,	* * *	11683565		
50. Mileage of nonrevenue trains,	* * *	392323		

574 Whereupon the attorneys for the State of Florida on the relation of the attorney general and special counsel for the railroad commissioners of the State of Florida, offered and filed in evidence the annual report of the Atlantic Coast Line Railroad Company, filed with the railroad commission of the State of Florida, for the year ending June 30, 1903, which is in the words and figures as follows:

(Here follows fac-simile (Exhibit F) marked pp. 575, 612, 613, 614, 618, 619, 646, 647, 648 and 649.)

680 And thereafter the respondent to further maintain the issue on its part, filed in rebuttal the seventh annual report of the railroad commission of the State of Florida, for the year ending March 1, 1904, which is in the words and figures as follows:

681–694 G.

Seventh Annual Report of the Railroad Commission of the State of Florida for the Year Ending March 1, 1904.

[Vignette.]

* * * * * * *

695 Joint Rates.

Probably one of the most important acts of the railroad commission during the year was the adoption of order No. 35, amending rule No. 19, governing joint rates.

Rule 19 of the rules and regulations, prescribed by the *the* commission for the transportation of freight, required that the maximum rate charged on shipments originating and terminating within this State which passed over the whole or parts of two or more roads not under the same control, should be the sum of the local rates for the distance hauled over each road.

While the commission could not see their way clear to order into operation a straight mileage rate for shipments passing over two or more roads, still they were of the opinion that the sum of the local rates was unreasonably high, and it was determined to take the matter up with the railroads with a view of making a reduction. A meeting of the commission was held at Jacksonville on November 17th, 1903, and the railroads were given an opportunity to show cause why rule 19 should not be amended to meet the views of the commission. The railroad companies were represented at this meeting by their traffic officials and protested against any reduction of joint rates, but especially requested that if the commission were determined to reduce these rates, that they except classes L, N, O and P, which classes the representatives of the roads contended were already very low.

After due consideration the commission decided to make this exception and issued their order, No. 35, amending rule 19, fixing the maximum rate on all freights, originating and terminating in this State, except classes L. N. O and P, which pass over the whole of two or more roads, not under the same control, at the sum of the local rates, for the distance hauled, less ten per cent.

696–699 This reduction will amount to a large saving in freight charges to the people of the State.

* * * * * * *

700 "Cannot Prevent Advances.

"There is now no way in which these advances can be prevented. If they are just and reasonable they ought not to be prevented. In cases where the reasonableness of charges is fairly in doubt the benefit of that doubt should be given to the railways; but it is impossible to contemplate with indifference the fact that the results of all the recent improvements in transportation facilities is an increase in the transportation charge, or to remember with indifference that this species of property now possesses the power to tax unjustly every other species of property. If these charges are unreasonable, they are a most insidious means of taking unjustly from the general body of the public for the benefit of the few, and some means should be devised by which this can be prevented."

The foregoing from the Interstate Commerce Commission shows that the raising of interstate rates has been general over the whole United States, and not confined to Florida. There has been a very general raise of interstate rates in Florida, which the railroad commissioners have been unable to prevent. Local rates have not been raised, and in many instances during the past year have been materially reduced. The general raise in interstate rates, however, demonstrates that there would have been a raise in local
701 rates if Florida did not have a railroad commission to restrain and prevent it.

* * * * * * *

702 Merchandise Rates.

In our last annual report we stated in detail the steps that were taken by the commission in ordering into effect a reduction on merchandise rates, to be operated by the Seaboard Air Line and Atlantic Coast Line railroads. The commission's order required that this rate should become effective July 1, 1904. At the appointed time the railroads put the rate into operation.

This reduction affected a large part of all the freights hauled by the Seaboard Air Line and Atlantic Coast Line railroads in Florida. For distances of 150 miles and over 140 miles the reduction on such articles as shoes, books, medicines, not otherwise specified, and mowing machines was 10 cents per 100 pounds. On bedsteads and bureaus, 7 cents per 100 pounds; on corn mills and cane mills, hoes and plow handles, 3 cents per 100 pounds; on brick in less that carload quantities, 8 cents per 100 pounds, and on lumber in less than carload quantities, 4 cents per 100 pounds; on bacon and hams packed in wood, 1 cent per 100 pounds. On corn and oats, 2 cents per 100 pounds; on flour, 4 cents per barrel; on household goods and live stock, $3.00 per carload.

The above is given to show how the reduction affects a few staple articles for a certain distance. The reduction is about the same for

all distances between points on the lines of the above named railroads, and affects practically all articles in less than carload quantities, and a few in carload quantities.

The above figures show the difference between the rate formerly authorized by the railroad commission, and the one now prescribed by them for the Atlantic Coast Line and Seaboard Air Line railroads. Between some points in the State, the railroads prior to July 1, 1903, operated what are known as special rates; that is, rates less than those allowed by the commission, so that when railroads were required to put down their rates to those of the commission, at those points where the special rates were in force, the reduction was not as much as given above, and in a very few instances the
703–768 rate was actually raised. While the commission regret that it should have been necessary to raise the rate at any point, yet unless there was competition of some kind to justify it the commission do not consider these special rates to have been just. The courts have decided that competition is a sufficient reason for a special rate, but where there is none, and where conditions are practically the same, the commission is of the opinion that rates between all points the same distance apart should be alike.

The reduction in merchandise rates, while it may seem small when considered in relation to any one article, yet when we consider that it affects every article of clothing, every article of household furniture and everything that we eat, it can readily be seen what a saving it will be in the aggregate to the people of Florida in the course of a year.

* * * * * * *

769 And thereupon the State of Florida on the relation of the attorney general, etc., closed its cause, and this concluded the testimony in the case.

And inasmuch as the said several matters objected to or insisted upon and considered by the court do not appear by the record, the said respondent did, on the 23rd day of December, 1904, during said term, propose this its bill of exceptions, to the Honorable R. F. Taylor, chief justice of the supreme court of the State of Florida, and request him to sign the same, which is done this 23rd day of December, 1904.

[Seal of the Supreme Court of Florida.]

R. F. TAYLOR, [SEAL.]
Chief Justice of the Supreme Court
of the State of Florida.

770 I, B. B. Wilson, clerk of the supreme court of the State of Florida, do hereby certify that the foregoing pages numbered from one (1) to seven hundred and sixty-nine (769) inclusive constitute a true copy of all of the proceedings, of all orders made and of all opinions filed by the supreme court of Florida, and a correct transcript of the record of the judgments rendered by the said su-

preme court of Florida in the case of The State of Florida *ex rel.* W. H. Ellis as attorney general of said State, and J. M. Barrs as special counsel for the railroad commissioners of the State of Florida, vs. Atlantic Coast Line Railroad Company, a corporation, as appear upon the files and records of my office; also the original writ of error from the Supreme Court of the United States to the supreme court of Florida in this cause, and the original citation to the defendant in error and acceptances of service thereof, and the original assignment of errors in the Supreme Court of the United States on said writ of error.

Which said transcript, annexed hereto, together with said original writ of error, original citation and original assignment of errors, I hereby certify as and for my full return to said writ of error.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court of Florida, at Tallahassee, the capital, this 29th day of December, A. D. 1904.

[Seal Supreme Court of the State of Florida.]

B. B. WILSON,
Clerk Supreme Court, State of Florida.

771 In the Supreme Court of the United States, October Term, 1905.

THE ATLANTIC COAST LINE RAILROAD Company, a Corporation under the Laws of the State of Virginia, Plaintiff in Error,
vs.
THE STATE OF FLORIDA *ex Rel.* W. H. Ellis, as Attorney General for said State, & J. M. Barrs, as Special Counsel for Jefferson B. Browne, John L. Morgan, & R. Hudson Burr, Railroad Commissioners of the State of Florida, Defendants in Error.
} No. 152, Oct. Term, 1905.

772 In pursuance of the rules and practice of this court it is hereby stipulated and agreed by and between counsel of record in this case as follows:

That all of the record in the above entitled cause shall be printed except that in Exhibits A, B, C, D, & E, only pages 34 and 35 of each said exhibit shall be printed and in Exhibit F, only pages 30, 31, 34, 35, 60, 61 A, 61 B, & 61 shall be printed, and all of the remaining pages of said five above mentioned exhibits shall be omitted. And in Exhibit G, only those parts of pages 16, 17, 21, 22 & 23 as follows, Commencing on page 16 with the heading "Joint

rates" ending on page 17 with the word "State" at the end
773 of the second line,—commencing on page 21 with the heading "Cannot prevent advances" and ending with the word "it" on the first line of page 22,—all of page 23 and so much of page 24 down to the word "year" at the end of the second paragraph of page 24,—shall be printed, the remainder of said Exhibit "G," shall be omitted in the printing.

Oct. 21, 1905.

JOHN E. HARTRIDGE,
Att'y for Plaintiff in Error.
W. H. ELLIS, Att'y Gen'l,
J. M. BARRS, Special Counsel,
Att'ys for Def't in Error.

774 [Endorsed:] File No. 19,584 Supreme Court U. S. October term, 1905. Term No. 152. The Atlantic Coast Line R. R. Co., P. E., vs. The State of Florida *ex rel.* W. H. Ellis &c. *et al.* Stipulation to omit parts of record in printing. Filed Oct. 21, 1905.

Endorsed on cover: File No. 19,584. Florida supreme court. Term No. 152. The Atlantic Coast Line Railroad Company, plaintiff in error, vs. The State of Florida upon the relation of W. H. Ellis, as attorney general of said State, and J. M. Barrs, as special counsel for Jefferson B. Browne *et al.*, railroad commissioners of said State. Filed January 3d, 1905. File No. 19,584.

FILE COPY.

Office Supreme Court U. S.
FILED
FEB 23 1906
JAMES H. McKENNEY,
Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1905.

No. [redacted]9

ATLANTIC COAST LINE RAILROAD CO.,
Plaintiff in Error,

vs.

THE STATE OF FLORIDA, Etc.,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

JOHN E. HARTRIDGE,
Attorney for Plaintiff in Error.

The Floridian

IN THE SUPREME COURT OF THE UNITED STATES.

ATLANTIC COAST LINE RAILROAD COMPANY,

Plaintiff in Error,

vs.

STATE OF FLORIDA UPON THE RELATION OF W. H. ELLIS, AS ATTORNEY-GENERAL OF SAID STATE, AND J. M. BARRS, AS SPECIAL COUNSEL FOR THE RAILROAD COMMISSIONERS OF SAID STATE.

Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

On January fifteenth, 1904, the Railroad Commissioners of the State of Florida, after a hearing had, at which the Defendant in Error was represented, made the following order:

It is further ordered by the railroad commissioners of the State of Florida, that the rate to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida, for the transportation of phosphate from points in the State to points within the State, shall not exceed one cent per ton per mile.

Provided, however, that where the rate of one cent per ton per mile will raise any rate now in operation, that said rate of one cent per ton per mile shall not be effective, but the rate as now charged by the railroad companies is hereby adopted by the railroad commissioners as their rate between such points.

It is therefore ordered, that where a shipment of phosephate shall pass over two or more railroads in reaching its destination within the State of Florida, the initial line may charge one and a half cents per ton per mile for the first ten miles which said phosphate shall be hauled.

It is further ordered, that where phosphate from points in Florida passes over two or more roads in reaching its destination within the State of Florida, that the provisions of rule 19, governing joint rates is hereby modified, so that the initial road shall have the right to deliver the shipment to the delivering road at such junctional point within the State of Florida as it may desire.

Provided, however, that the rate charged for such shipment shall be based upon the shortest mileage between the point of shipment and the place of destination.

On March eighth, thereafter, he Defendant in Error, by its Attorneys, presented and filed in the Supreme Court of the State of Florida, its petition and motion for a mandamus against the Plaintiff in Error, reciting the proceedings of the Railroad Commission and its order, and alleged that the Plaintiff in Error had refused to comply with the order of the Railroad Commission.

On March twelfth, 1904, an alernative writ of mandamus was issued on the petition and motion before referred to, citing the Plaintiff in Error to show cause, on March twenty-ninth, 1904, why it refused to obey the order of the Railroad Commission.

On March twenty-ninth, 1904, Plaintiff in Error filed a demurrer to the alternative writ upon six several grounds.

See page 14 of the record.

Argument upon the demurrer coming on to be heard, and on the twenty-eighth day of June, 1904 the Su-

preme Court of the State of Florida filed its opinion, overruling the demurrer.

See pages 16 to 25, inclusive, of record.

An order was made upon the overruling of the demurrer requiring the Plaintiff in Error to file its return showing obedience to the mandate or why it was not obeyed, by Tuesday, July twelfth, following, which time was, by order of the Court duly made, extended to the first Monday in August, 1904.

On July eighteenth, 1904, Plaintiff in Error filed its return, setting up five distinct and several grounds as to why said order had not been obeyed.

The first four grounds were based upon the opinion of the Court rendered upon the demurrer of Plaintiff in Error to the alternative writ of mandamus. The fifth return was to the effect that the enforcement of the writ of the Railroad Commission would result in depriving the Plaintiff in Error of its property without due process of law.

On July twenty-sixth, 1904, the Defendant in Error filed its motion to quash the five returns of the Plaintiff in Error.

By leave of the Court, on July twenty-ninth, 1904, the Plaintiff in Error amended its fifth return so as to make it read as follows:

"That the passenger and freight tariffs prescribed by the Railroad Commissioners of the State of Florida to be observed by the defendant in the carriage of freight and passengers in the State of Florida, including the schedule of tariff of rates sought to be enforced in this proceeding, are unreasonable and do not give to the defendant fair and reasonable compensation for the services required to be performed by it in the carriage of such freight and passengers; and that the enforcement of such tariff and rates of said Florida Railroad Commis-

sion will result in depriving respondent of its property without due process of law and of the equal protection of the laws contrary to the guarantees of the Constitution of the United States and the amendments thereof."

On July twenty-ninth, 1904, the Defendant in Error again filed its motion to quash all of the returns, including the amended fifth return, of the Plaintiff in Error.

On July thirtieth, 1904, the Supreme Court of Florida made an order that the motion of the Defendant in Error, as to the first four returns, be granted, and as to the amended fifth return, denied.

Thereupon, a joinder of issue was had upon the amended fifth return and the time named for taking the testimony before the full Bench of the Supreme Court of Florida, in open Court.

Upon the hearing had upon the testimony submitted, the Court held that the rate in question was not unreasonable and that said rate taken in connection with the other rates prescribed by the Railroad Commission did not deprive the Plaintiff in Error of its property without due process of law nor deprive it of the equal protection of the law, within the inhibition of the Federal Statute.

ASSIGNMENTS OF ERROR.

The fourth, fifth, sixth and seventh assignments of error cover the Federal question involved in this case, and are as follows:

Fourth. The court erred in its final judgmenut awarding the peremptory writ of mandamus and in adjudging that the rate prescribed by the order of the railroad commissioners of the State of Florida of the 17th day of December, 1903, was not unreasonable.

Fifth. The court erred in its final judgment awarding the peremptory writ of mandamus and adjudging that the rate prescribed by the order of the Railroad Commission of the State of Florida of December 17th, 1903, taken in connection with the other rates prescribed by said Railroad Commission, does not deprive the respondent of its property without due process of law within the inhibition of the Federal Constitution.

Sixth. The court erred in its final judgment awarding the peremptory writ of mandamus and adjudging that the rate prescribed by the order of the railroad commission of the State of Florida of December 17th, 1903, taken in connection with the other rates prescribed by said Railroad Commission, does not deprive the respondent of its property without due process of law nor of the equal protection of the law within the inhibiton of the Federal Constitution.

Seventh. The court erred in its final judgment awarding the peremptory writ of mandamus and adjudging that the rate prescribed by the said order of the Railroad Commission of the State of Florida of December 17th, 1903, was not unreasonable, and that said rate taken in connection with the other rates prescribed by said Railroad Commission does not deprive the respondent of its property without due process of law nor of the equal protection of the law within the inhibition of the Federal Constitution.

ARGUMENT.

The testimony shows that the cost of material used in the railroads, and salaries of employes, have materially increased, and that the expense of handling local or State trafic is greater than in handling inter-state or through traffic, by at least twenty or twenty-five per

centum for the reason that in handling inter-state business the freights are carried through without additional expense incurred in handling intra-business in the way, of handling, delivery and shifting, side-tracks, warehouses, and men to handle the same.

Referring to the particular commodity involved, Mr. W. B. Denham, who was, at the time of testifying, General Superintendent of the Division, testified as follows:

"With reference to comparing phosphate freight with other heavy freights phosphate is the most expensive freight we handle. In the first place, it is a very hard material on the cars. We are compelled to handle it in cars so as to exclude moisture, and therefore must use box cars. It is not an infrequent occurrence for us to have cars burned every month by the miners loading hot rock into them. In the handling of the trafic, in order to save the miners demurrage on their stuff, they give us notice they will have boats in a port at a certain time, probably 15 or 20 days before the boat is due. We naturally put off delivery of the cars, under this notice, just as long as it is possible in order to get the phosphate to the port in time to load the boat. It frequently happens that there are three or four ships due about the same time. Of course the road cannot afford to run its cars to the mines 15 or 20 days ahead and hold them until the ships arrive. We wait until the last minute and, of course, that means extra service. The empties are run in, and about the time they are gotten there the miner has some of those cars ready to go back. The engine and crew that take a train down have to go back with it, to even up the power. Whenever we return a train south we must have one going north, so as to have engines at both ends of the line. Just about the time we have 200 or 300 cars to move probably the last train load will commence getting some of

the loads going back on the ship, and we have to run light engines to take the loads back. Of course we try to give an engine going south a load. With three ships due at the same time, if you get the phosphate aboard you have about 600 cars tied up, and if the ships do not arrive on time the cars are tied up until they do arrive. From my actual experience we have held cars 15 or 20 days, and sometimes 30 days, for a ship and for which the phosphate miner paid no demurrage. Not only that, but it necessitates having switching engines at the mines. The phosphate may be loaded from three or four mines, and we have to have a crew and engine to give the mines regular shifts. Sometime we can load only five or six cars at a shift, and this requires the engine to go at certain hours, put in its empties and bring this out to the main line before being attached to a through crew. There are expenses attached to the port. It is necessary to keep an engine at the port to shift the cars from the ship; as the stuff is taken out the empties must be pulled out and loads put in.

COST OF REPRODUCTION.

The testimony as to the cost of re-production, was as follows:

"I have been engaged with railroad construction and am familiar with the mileage of the Atlantic Coast Line Railroad Company in Florida. I have been over and exemained every mile of it. Taking that mileage as an entirety, in my judgment, if the money were economically, honestly and wisely expended, to-day, taking the terminals and everything into consideration, I suppose it could be replaced at a cost of $20,000 per mile. Relative values are higher to-day than formerly;

the cost of material is higher; and the property over which these railroads are laid has increased in value; that is, if you had to reproduce them and recondemn to-day.

"I understand from my experience and actual operation that the cost of operating a railroad for intrastate trafic, as separate and apart from inter-state trafic, would be 25 per cent. additional; that is, if it cost 60 per cent. to operate all of the lines there should be added 25 for the cost of operation of its local or intra-state traffic, if it was all local traffic."

CASH VALUE.

As to cash value, the testimony was as follows:

"Referring to the cash value of the property, I think we might be able to sell it for $10,000 per mile. It would not bring over 2 or 3 per cent. interest on $10,000 per mile at its present earnings. There are about 1265 miles in Florida. There is a total mileage in Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida of about 4,000 miles."

FREIGHT RECEIPTS FOR BUSINESS WHOLLY IN FLORIDA.

"My name is R. S. McIver. I am 42 years old. I am auditor of the freight receipts of the Atlantic Coast Line Railroad Company, and have been since July 1, 1902. Prior to that time I was connected with the roads

of the Plant system, which now compose the Atlantic Coast Line by consolidation, and was then auditor of both freight and passenger receipts. I have occupied that position since 1885. I handle freight earnings and have made a compilation of the freight earnings for the year ending June 30, 1904, I mean for Florida intra-state business. The data and figures were taken from the original reports of the agents. The agents send their reports in monthly and I bind them every month as soon as I finish their examination. The figures that I now have are taken from the reports of twelve months. The freight earnings of the Atlantic Coast Line Railroad Company for Florida's intra-state business for the year ending June 30, 1904, were $871,926.41."

PASSENGER RECEIPTS FOR BUSINESS WHOLLY IN FLORIDA.

"My name is George B. LeGrand. I am 42 years old. I am auditor of passenger receipts for the Atlantic Coast Line Railroad Company, and have been since July first, 1902. I have been connected with the Atlantic Coast Line Railroad Company since 1882, holding various positions in the clerical department—in the accounting department. I have made a compilation of the passenger earnings of the Florida business of the Atlantic Coast Line for the year ending June 30, 1904. I have made same from our agents' reports and conductors' reports of which I have charge. I have filed them each month, some are bound and others are not. They are all filed together, however. The passenger earnings on intra-state business for the ear ending June 30, 1904 were $678,326.80, which, added to the freight earnings, $871,926.41, on intra-state business, make a total of $1,550,253.21.

RECAPITULATION.

SHOWING RECEIPTS FROM ALL SOURCES, OF INTRA-STATE BUSINESS.

The total intra-state freight and passenger earnings for Florida for the year ending June 30, 1904, were $1,550,253.21. The total mileage in Florida is 1263.74 miles. Taking the cost of operaton at 56.7 per cent., it would amount to $ x; add to this the taxes paid $162,928.23 and we will have a total of $ x;—leaving the net earnings $508,331.41, which, at a valuation of $8,000 per mile, would equal 5.3 per cent; at a valuation of $10,000 per mile 4 2-100 per cent. Taking the cost of operation as 66.7 per cent., it would amount to $1,034,018.89; add to this the taxes paid, $162,928.23, we would have a total of $1,196.12,—leaving the net earnings $335,306.09 on a mileage of 1263.74, which, at a valuation of $8,000 per mile, would equal 3.49 per cent; at a valuation of $9,000. 3. 11per cent; and at a valuation of $10,000 per mile 2.79 per cent., as the net profits received from the intra-state business done in Florida.

The entire earnings of the Atlantic Coast Line Railroad Company on all traffic of all classes in Florida, both intra-state and inter-state, for year ending June 30, 1004, were as follows:

Freight earnings	$2,480,289.60
Passenger earnings	1,048,113.63
Mail	144,160.27
Express	115,633.46
Extra baggage and storage	12,142.69
Tracks, yards and terminals	50,329.20
Other sources	52,243.85
Making a total of	$3,903,012.70

FEDERAL QUESTION INVOLVED.

The Federal question involved may be presented in two several ways, and is properly divided:

First. Whether the Plaintiff in Error is earning its operating expenses, taxes, and a reasonable return on the money invested.

Second. Whether a reasonable rate is not understood to be a rate reasonable as an entirety? In other words, if a rate is reasonable for a long haul and unreasonable for a short haul, is not the rate as an entirety an unreasonable rate?

QUESTION OF LAW UPON WHICH CASE OF PLAINTIFF IN ERROR IS BASED.

The question involved is, whether Plaintiff in Error in the operation of that portion of its line situated entirely in Florida has a right to earn sufficient revenue from the State passenger and freight business done upon said division, to pay operating expenses, taxes, and a reasonable return upon its investment?

THE FLORIDA RAILROAD COMMISSION, IN FIXING FUTURE RATES, DOES NOT ACT AS A COURT.

The power to fix future rates is legislative and not juduicial.

167 U. S., page 499 I. C. C. vs. C. N. O. & T. P. R'y.

The Florida Railroad Commission, in fixing future rates, acts in a legislative capacity. Whatever judicial power it may have in regard to other matters, it does not act judicially when it assumes to fix rates.

98 Fed. Reporter, 341—2, W. U. T. Company vs. Myatt.

Even if the Legislature of Florida had denominated the Commission a court, it would not be conclusive as to the nature of the jurisdiction and powers conferred upon it. That question is not to be determined by any terminology employed in the Act.

98 Fed. Rep., pages 346, 349, W. U. T. Company vs. Myatt.

It may be premised, however, here, that Mr. Justice Brewer said in the Dey case: "Compensation implies three things—payment of the cost of service, interest on bonds, and then some dividend;" 'adequate dividend', subsequent cases say. These, then are the factors of compensation to be applied.

78 Fed. Rep., page 262, Southern Pac. Co. vs. Board of Railroad Commissioners.

In the case of Milwaukee Electric Railway and Light Company vs.. Milwaukee it was held that an ordinance was void under the 14th amendment, as depriving the company of its property without due process of law which required a street railroad compnay to reduce its rates, "when the road was only making yearly net earnings of 3.3 per cent., to 4.5 per cent. on its bona fide investment, and payng 5 per cent. interest on its bonds, in a city where the current rate of interest on first mortgage real estate security is 6 per cent.

87 Fed. Rep. page 577.

RATE OF INTEREST IN FLORIDA.

In arriving at what is a reasonable earning upon money invested, the statute of a State, as to interest charges allowed in the absence of a contract, is germane.

The Revised Statutes of Florida, 1892, Section 2320, provide that, "in all cases where interest shall accrue without a special contract for the rate thereof the rate shall be eight per cent. per annum, but parties may contract for a less or greater rate by contract in writing."

The method employed by the Plaintiff in Error to demonstrate that its earnings from State passenger and freight business in Florida do not exceed its operating expenses, taxes and a fair return upon the value of its lines wholly within Florida, derived from State passenger and freight business, is taken from the opinions of the Supreme Court of the United States in the cases of Smyth vs. Ames.

169 U. S., page 466., and
C. M. & St. P. R'y vs. Tompkns, 176 U. S., page 177.

"A State law, or regulations made thereunder, es-
"tablishing rates for transportation by railroad that will
"deprive the carrier of just compensation, is repug-
"nant to the 14th Constitutional Amendment, as depriv-
"ing the carrier of his property without due process of
"law, and denying to it the equal protection of the laws.

"While the State may fix rates of transportation,
"the question whether the rates are so unreasonably
"low as to deprive the carrier of its property without
"such compensation cannot be determined by state stat-
"ute or regulations thereunder so conclusively that the
"matter may not become the subject of judicial inquiry.

"The reasonableness or unreasonableness of rates "precribed by a State for the tranportation of persons "and property wholly within its limits must be deter- "mined without reference to he inter-state business done "by the carrier, or to the profits derived from it.

"Railroad rates should be fixed with reference to "the fair value of the property used and services ren- "dered, and not merely to pay expenses, interest and "dividends, nor in order to realize profits upon an exces- "sive valuation or a fictitious capitalization."

Smyth vs. Ames, 169 U. S., page 466.

The testimony of one of the witnesses in the case of Smyth vs. Ames was to the effect that it cost from 10 per cent. to 20 per cent. more for local than for through freight, and another, that the cost of a short haul was reasonably double a long haul, and the court in considering that case allowed 10 per cent. additional to be added to the through freight in reaching the cost of the local freight.

In the case at bar, the testimony of Mr. Denham, General Superintendent, showed that it would cost 25 per cent. more in Florida for inter-state trafic than it would for intra-state traffic.

The cases above cited, which hold that a railroad company is entitled to earn a sufficient amount to pay operating expenses, taxes, interest upon mortgage bonds, and some dividends to the stockholders, would, *a fortiori,* hold that a railroad company which owned no mortgage bonds, would be entitled to earn operating expenses and taxes, and, in addition, dividends for its stockholders equal to what the interest upon the mortgage bonds would have been, if such bonds were outstanding.

And so, the cases which hold, that the stockholders are entitled to dividends equal to, or approximating the legal rate of interest, would, *a fortiori,* hold that the stockholders were entitled to dividends equal to 4 per

cent. upon the present actual value of a road, located in a State where the legal rate of interest, as in Florida, is 8 per cent.

The testimony of Mr. Denham, General Superintnedent, who surveyed and built the most of the division in Florida of the Plaintiff in Error, shows that it would cost $20,000 per mile to replace the property, wisely, honestly and economically expended; that on the market it could probably be sold for $10,000 per mile, cash. This, however, is not a criterion of its value upon the basis of which it should be allowed earnings; but, rather, the cost of reproduction of the property should be the test.

TABULATION.

As shown by the record, the order of the Commissioners provides that the rate to be charged by all railroads and common carriers doing busuiness wholly or in part within the State of Florida, for the transportation of phosphate from points in the State to points within the State, shall not exceed one cent per ton per mile. This rate is prohibited, however, by order whenever its use would raise the rate now charged, and furuther when the commodity in reaching destination will pass over two or more lines, the initial road is allowed to charge one and one-half cents per mile for the first ten miles of the haul.

For the convenience of the court we make the following tabulation from the testimony:

ACCOUNTING DEPARTMENT.

Statement showing intra-state earnings, cost of operation, taxes and net earnings of that part of the Atlantic Coast Line Railroad lying wholly within the State of Florida, for the 12 months ending June 30th, 1904.

Freight earnings	$871,926.41
Passenger earnings	678,326.80
Total	$1850,253.21
Cost of operation 66.7 per cent,	$1,034,018.89
Taxes	162,928.23
	$1,196,947.12
Net earnings	$353,306.09

Total mileage of road in Florida, 1,263.74 miles.

$353,306.09 equals 3.49 per cent. on valuation of $8,000 per mile.

$353,306.09 equals 3.11 per cent. valuation of $9,000 per mile.

$353,306.09 equals 2.79 per cent. on valuation of $10,000 per mile.

ACCOUNTING DEPARTMENT.

Statement showing intra-state earnings, cost of operation taxes and net earnings of that part of the Atlantic Coast Line Railroad lying wholly within the State of Florida, for the 12 months ending June 30th, 1904.

Freight earnings	$871,926.41
Passenger earnings	678,326.80
Total	$1,550,253.21
Cost of operation 56.7 per cent.	$878,993.57
Taxes	162,928.23
	$1,041,921.80
Net earnings	508,331.41

Total mileage in Florida, 1,263.74 miles.

$508,331.41 equals 4.47 per cent. on valuation of $8,000 per mile.

$508,331.41 equauls 4.47 per cent. on valuation of $9,000 per mile.

$508,331.41 equals 4.02 per cent. on valuation of $10,000 per mile.

Florida earnings and expenses for the year ending June 30th, 1904, as reported to the railroad commission.

EARNINGS:

Freight	$2,480,289.60
Passenger	1,048,113.63
Mail	144,160.27
Express	115,633.46
Extra baggage and storage	12,142.69
Tracks, yards and terminals	30,329.20
Other sources	52,434.85
	$3,903,012.70

It will be observed that with the cost of operaton at 66.7 per cent., which includes 10 per cent. additional for the cost of intra-state trafic more than inter-state traffic, the earnings would be less than 3 per cent. If on the other hand, we take the operation at 56.7 per cent. the earnings would be only 4.2 per cent. on a valuation of $10,000 per mile. These figures are conservarive in the extreme, in view of the testimony as to value, and we submit that with interest ruling, as a statutory rgulation, at 8 per cent., no reduction should be made in the rate that in any way militates against earning this amount of money.

WHAT IS PROPERTY?

What is property and what amounts to a deprivation of it is discussed at length by Judge Hare in his work on American Constitutional Law, at page 357 of which work he says:

"The term property may be used to signify the "thing owned or possessed, or the right and privileges "which together make up the aggregate of use or enjoy- "ment implied in ownership. Property may therefore "be justly defined as 'the dominion of indefinite right of "user or disposition which one may exercise over par- "ticular things or subjects.' This is its appropriate "meaning, and that which it has in the Constitution; "although it is not infrequently used to indicate the thing "rather than the right, and much of the uncertainty and "confusion observable in the decisions have arisen from "overlooking this distinction.

"Such, manifestly, is the true interpretation of the "Federal Constitution, because the same amendment "which guarantees the right to compensation where "property is taken for public purposes provides that "no person shall be deprived of life, liberty or property "without due process of law."

On page 383 of the same work, he says:

"For as property is a right to the entire or partial "use, occupation, or enjoyment of some specific thing, it "may be taken either by abrogating the right, or so "dealing with the thing that the right cannot be bene- "ficially executed or enjoyed."

IS THE RATE REASONABLE AS AN ENTIRETY?

That the rate is not reasonable as an entirety we think is shown by the testimony of General Superintendent Denham. If the Plaintiff in Error were required to place 50 cars for phosphate, or a less number, for a haul of only 40 miles, the compensation to be paid to it under the rate made by the Commission would not pay for the cost of placing the cars, though if the haul were 400 miles it might afford compensation. That the rate is unreasonable for a short haul the commission in its report for 1904 (see pages 70, 71, 72 and 73 of the record) practically admits. A rate to be reasonable, we insist, must be reasonable as a whole. You cannot segregate and say that a rate is reasonable for 100 miles if it is not reasonable for 20 miles. Unless it is reasonable for the entire mileage it is not a reasonable rate, and the report of the Commission admits that for a haul of 10 or 20 miles the rate is unreasonable. This being true, the whole rate should be held unreasonable.

The short haul should be reasonably double the long haul.

Smyth vs. Ames, 169 U. S., text, 529.

The reasonableness of a rate must be determined solely upon the intrastate business.

Smyth vs. Ames, 169 U. S., 467.

Counsel for Defendant in Error contend that the method of arriving at the actual operating expenses for Florida is an erroneous method and misleading and does not give to Florida the proper portion of earnings, and charges the system in Florida with a greater burden for expense of operation than should be the case.

This contention is very well answered by Mr. R. S. McIver (page 59 of the record), as follows:

If the Florida lines were a separate company the receipts from freights would be very much less than they now are under the system of allotment under which the figurues submitted have been made. The earnings in Georgia are considerably heavier than in Florida, and that is the way with other lines. The total freight receipts from phosphate hauled in Florida for the year ending June 30, 1904, were about $430,000.

It will be seen, therefore, that instead of the method of apportioning the tons of freight handled and all expenses in regard thereto being to the disadvantage of Florida, it is to its advantage, and that, as a matter of fact, under the testimony just quoted, the expense of operation would be even greater than that contended for by Plaintiff in Error.

We submit that under a careful reading of the record in this case and the rpinciples of law applicable thereto, the contentions of Plaintiff in Error are well taken and should be sustained.

JOHN E. HARTRIDGE,
Attorney for Plaintiff in Error.

John E. Hartridge

No. 152.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1905.

Office Supreme Court U. S.
FILED
JAN 15 1906
JAMES H. McKENNEY,
Clerk.

NO. [redacted]9

ATLANTIC COAST LINE R. R. CO.

PLAINTIFF IN ERROR.

vs.

THE STATE OF FLORIDA ETC.

DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR.

W. H. ELLIS, Attorney General
J. M. BARRS, Special Counsel.

THE FLORIDIAN

SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1905.

The Atlantic Coast Line Railroad Company, Plaintiff in Error, vs. The State of Florida upon the relation of W. H. Ellis, As Attorney General of Said, State, and J. M. Barrs, as Special Counsel for Jefferson B. Browne et al., Railroad Commissioners of said State. Defendant in Error.	No. 152. Error to the Supreme Court of Florida.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

This case is before this Court on a writ of error to the Supreme Court of the State of Florida, in which an action of mandamus was instituted to enforce rates on phosphate from points in the State of Florida to points within the said State over all the lines of railway of the plaintiff in error wholly or in part within the State of Florida.

The Railroad Commissioners, in prescribing the rates as set up in Exhibits A. and B. (pp. 11 to 13, inclusive, of record), acted in pursuance of Chapter 4700, Laws of Florida, p. 76 Acts of 1899.

The record shows all the proceedings in said suit, but the opinion on the merits of the case will be found on pp. 35 to 37, inclusive, of the record, which is based on the evidence taken before the Supreme Court of Florida, on p. 47 et seq. of the record.

The authority of the Railroad Commissioners, under the Constitution and Laws of Florida, to make and enforce rates for the transportation of freight and passengers from points in Florida to points in Florida, limited only by the provisions of the Federal Constitution against the taking of property without due process of law; the right of the State to enforce the orders of the State Railroad Commission by mandamus instituted originally in the Supreme Court of the State; the regularity of the proceeding before the Railroad Commission preliminary to the making of its orders; and the prima facie correctness, justice and validity of the orders of the Commission, and the duty of the courts to enforce the orders of the Commission, in the absence of an affirmative showing before the Court made by the defendant in a mandamus proceeding sufficient to overcome the prima facie validity of the orders of the Commission, —are, we understand, not questioned by the plaintiff in error, and are entirely manifest by reference to the Constitution and Laws of Florida, and cannot be reviewed by this Court.

ARGUMENT.

FIRST.

The first assignment of error is based on the overruling of the demurrer of the plaintiff in error to the alternative writ of mandamus. The opinion of the Supreme Court of Florida and the statement of the cause will be found on pp. 15 to 25, inclusive, of the record.

It is not deemed necessary to argue this point. This is a question of State practice which is concluded so far as this hearing is concerned.

Tripp v. Santa Rosa St. R. Co., 144 U. S. 126.
Iowa Cent. R. Co. v. Iowa, 160 U. S. 389;
Grand Rapids etc. R. Co. v. Butler, 159 U. S. 87;
Wood v. Brady, 150 U. S. 18;
Gibson v. Mississippi, 162 U. S. 565;
French v. Hopkins, 124 U. S. 524;
Loeber v. Schroeder, 149 U. S. 580;
Thorington v. Montgomery, 147 U. S. 490;
McNulty v. California, 149 U. S. 645;
Northern Pacific R. Co. v. Patterson, 154 U. S. 130;
O'Neill v. Vermont, 144 U. S. 323;
Hibbin v. Smith, 191 U. S. 310;
Smith v. Indiana, 191 U. S. 138.

SECOND.

This court is precluded from reviewing the judgment of the Supreme Court of Florida on the second assignment of error. See cases cited above.

THIRD.

The third, fourth, fifth, sixth and seventh assignments of errors are in effect the same, and all are based on the final decision of the Supreme Court of Florida, which is contained in the record on pp. 35 to 37, inclusive. The eighth is a blanket assignment which covers all the others. No Federal question of law is raised by any of these assignments. The Supreme Court of Florida found the facts as stated in its opinion and that finding is conclusive in this court.

Hall v. Jordan, 15 Wall. 393;
Carpenter v. Williams, 9 Wall. 785;
Republican River Bridge Co. v. Kansas Pac. R. Co., 92 U. S. 315;
Martin v. Marks, 97 U. S. 345;
Kenney v. Effinger, 115 U. S. 577;
Quimby v. Boyd, 128 U. S. 488;
Dower v. Richards, 151 U. S. 658;
Hedrick v. Atchison, etc. R. Co., 167 U. S. 673;
Atchison, etc. R. Co. v. Matthews, 174 U. S. 96
Backus v. Fort St. Union Depot Co., 169 U. S. 557;
Egan v. Hart, 165 U. S. 188;
In re Buchanan, 158 U. S. 31;
Chicago, etc. R. Co. v. Chicago, 166 U. S. 226;
Missouri, etc. R. Co. v. Haber, 169 U. S. 513.

The Supreme Court of Florida, in their original jurisdiction of mandamus cases, are the judges of the fact as well as of the law.

The State ex rel County Commissioners of Columbia County v. County Commissioners of Suwannee County, 21 Fla. 1.

The Supreme Court of Florida in their opinion in this case, did not enunciate any questionable principles of law. The opinion is limited almost, if not quite, to their findings of facts based on the testimony of the plaintiff in error before them.

See pp. 35-37 of the record.

According to the decisions by this court, the plaintiff in error has not shown sufficient facts to reverse the judgment of the Supreme Court of Florida, if the court should decide, contrary to our contention, and that the points raised in the case are questions of mixed law and fact and properly reviewable by this court.

Chicago M. & St. R. Co. v. Minn., 134 U. S. 418;

Chicago & G. T. R. Co. v. Wellman, 143 U. S. 339;

Reagan v. Farmers Loan & T. Co., 154 U. S. 362;

St. Louis & S. F. R. Co. v. Gill, 156 U. S. 649;

Covington & L. Tr. Co. v. Sanford, 164 U. S. 578;

Smyth v. Ames, 169 U. S. 466;

San Diego L. & T. Co. v. Jasper, 189 U. S. 439.

If this court could go back of the findings of fact we could rely upon the opinion of the Supreme Court of Florida, pages 35, 37 of the records for sufficient comment upon the evidence submitted by the Atlantic Coast Line Railroad Company. We, however, would call the attention of the court to the fact that what evidence was submitted by that company was shown to be utterly worthless when on cross-examination the witnesses admitted that their books from which they testified do not show the actual receipts from intrastate freight business in Florida, but that the books from which they testified showed as receipts from Florida intra-state business only the result of multiplying the actual number of tons of such freight hauled one mile in Florida by the *average* ton-mile freight rate on the whole Atlantic Coast Line System.

See testimony of R. S. McIver, Auditor of Freight Receipts for the Atlantic Coast Line Railroad Company, record pages 56 and 57, in which he, on cross-examination, says:

"The amount of freight receipts allotted to Florida does not represent the actual receipts for hauling freight in Florida, but is arrived at by taking the total number of tons of freight hauled one mile on the entire A. C. L. system in Virginia, North Carolina, South Carolina, Georgia, Florida, and Alabama, and the entire freight receipts of the entire system for the year, and thereby ascertaining the average rate per ton for hauling one mile all freight hauled on the system. We then take the actual number of tons of freight handled one mile in Florida and multiply that by the average rate received by the system and allot the amount so arrived at to the Florida lines as their earnings. This is the basis on which all of our statements are made."

Inasmuch as the average rate of freight per ton per mile in Florida is several times greater that the average rate on the entire system the injustice done to Florida is manifest, and this is also shown in the evidence by their witness on cross-examination when they admit (see testimony of W. B. Denham Record P. 53) that the business done by the Atlantic Coast Line in Florida for the year ending June 30th, 1903 was considerably better than the business done by the Plant System over the same lines the year before, and yet because of this system of book-keeping, showed the gross earnings of the Atlantic Coast Line for 1903 more than $818,000. less than reported by the Plant System for 1902.

It was also attempted to charge the operating expenses as a cost of hauling freight one year the purchase of engines, the cost of taking up light rails and replacing with heavy rails and other betterment or construcion charges.

The evidence also fails absolutely to show that the enforcement of the order of the Commission will reduce the revenues or add to the expenses of the company one single cent. Indeed it is affirmatively stated by witnesses for the Atlantic Coast Line that there are now no intra-state shipments to be affected, consequently there can be no damage arising from the putting into effect of the proposed rate.

It is therefore respectfully submitted that the decision of the Supreme Court of Florida should be affirmed.

W. H. ELLIS Atty Genl.
J. M. BARRS, Special Counsel for defendant in error.

FILED
MAR 1 1906

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

SEABOARD AIR LINE RAILWAY,
Plaintiff in Error,
v.
THE STATE OF FLORIDA, ETC.,
Defendant in Error.

No. ~~105~~ 10
and
No. ~~155~~ 11.

THE ATLANTIC COAST LI
RAILWAY COMPANY,
Plaintiff in Error,
v.
THE STATE OF FLORIDA, ETC.,
Defendant in Error.

No. ~~152~~ 9.

Supplemental Brief for Defendant.

WM. H. ELLIS, Attorney-General.
J. M. BARRS, Special Counsel.
Attorneys for Defendant.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

SEABOARD AIR LINE RAILWAY, Plaintiff-in-Error, vs. THE STATE OF FLORIDA, upon the relation of W. H. ELLIS, as Attorney-General, *et al.*	Nos. 155 and 156.
THE ATLANTIC COAST LINE RAILWAY COMPANY, Plaintiff-in-Error, vs. THE STATE OF FLORIDA, upon the relation of W. H. ELLIS, as Attorney-General, *et al.*	No. 152.

BRIEF FOR DEFENDANT IN ERROR.

Statement.

Plaintiffs in error failed to have the records printed in time to permit defendant in error to possibly file briefs as required by the rules of this court before the cases were first reached on the docket, and failed so long thereafter to file

their briefs that attorneys for defendant in error came to the conclusion that they did not intend to file such briefs at all. We, therefore, under that impression, filed our first briefs.

This brief is not intended as taking the place of those heretofore filed, but as supplemental thereto, and as replies to Briefs of Plaintiffs in Error.

The briefs for plaintiff in error were filed for the Seaboard Air Line Railway, February 17, and for the Atlantic Coast Line Railroad Company, we understand, will be filed still later. Attorneys for defendant in error, therefore, present for the consideration of the Court in reply to the plaintiff the following:

The three above-entitled cases were tried in the Supreme Court of Florida at the same time upon identically the same issue, the issue in each case being presented as a return to an alternative writ, the return and joinder of issue thereon being in the three cases in identically the same language, the return being,

"that the passenger and freight tariff prescribed by the Railroad Commission of the State of Florida, to be observed by the defendant in the carriage of freight and passengers in the said State of Florida, including the schedule or tariff of rates sought to be enforced in this proceeding, are unreasonable and do not give to the defendant fair and reasonable compensation for the services required to be performed by it in the carriage of such freight and passengers, and that the enforcement of such tariff and rates of said Florida Railroad Commission will result in depriving respondent of its property without due process of law and of the equal protection of the laws contrary to the guarantees of the Constitution of the United States and the amendments thereof."

The alternative writ and every subsequent pleading in numbers 152 and 156 hereinafter referred to as Phosphate Rate cases are identical, the names of the railroad companies only excepted. The alternative writ and earlier pleadings in 155 hereinafter referred to as the West Shore case are somewhat different from those in 152 and 156, but the only question before this Court is based on the amended return above quoted, upon which issue was joined. The three cases having been tried and decided together upon the same issue, it is understood among counsel that they will be submitted in this Court

together. This one brief will, therefore, be submitted by us in the three cases, noting herein briefly such differences as are presented by the three records.

Plaintiffs in error do not question the authority of the Railroad Commission under the Constitution and laws of Florida, to make and enforce rates for the transportation of freight and passengers from points in Florida to points in Florida, limited only by the provisions of the Federal Constitution against the taking of property without due process of law; or the right of the State to enforce the orders of the said Railroad Commission by mandamus, instituted originally in the Supreme Court of the State; or the regularity of the proceedings before the Railroad Commission preliminary to the making of its orders; or the *prima facie* reasonableness, justice and validity of the findings and orders of the Commission; or the duty of the courts to enforce the orders of the Commission, in the absence of an affirmative showing before the Court made by the defendant in a mandamus proceeding sufficient to overcome the *prima facie* validity of the orders of the Commission; and they are entirely manifest by reference to the Constitution and laws of Florida, and cannot be reviewed by this Court.

We will submit that attorneys for plaintiffs in error contend only that the Supreme Court of Florida erred in findings of fact, and that the findings of the Supreme Court of Florida, and facts as stated in its opinions, are conclusive in this Court. We submit, however, that the findings of fact in the Supreme Court of Florida, and the decisions in that Court, were not erroneous, even if reviewable as findings of fact, in this Court.

The opinions of the Supreme Court of Florida speak most convincingly for themselves on this point.

In the phosphate rate cases the Railroad Commission of Florida had fixed a rate of freight on phosphate, with certain limitations and provisions, at one cent per ton per mile, and these orders are sought to be enforced, and in the West Shore case the Railroad Commission was seeking to enforce a rule made by that Commission in pursuance of law (sustained as to its validity by the Supreme Court of the State of Florida) which is as follows:

"All railroads which are under the management or control by lease, ownership or otherwise of one and the same

company and all connecting roads, the majority of whose stock is owned or controlled, either directly or indirectly by one of the connecting lines, shall for the purpose of transportation in applying their schedules of freight rates be considered as constituting but one and the same road, and the rates shall be computed as upon parts of one and the same road, unless otherwise specified. The fact that each of said roads has a separate Board of Directors shall not prevent the application of this rule. Whenever any railroad company owns and operates in connection with its road for the purpose of transporting its cars, freight or passengers in steamer or other water craft, such steamer or water craft shall be deemed a part of its said road."

The railway companies having pleaded that the enforcement of the orders of the Railroad Commission in these cases would practically confiscate their property, and issue being joined on that return, and the *prima facie* reasonableness, justice and validity of the orders being legally established and the burden of overcoming this *prima facie* character of the order being placed upon the railroad companies, trial of the three cases were entered upon.

Under the Florida laws the Railroad Commission have the right to fix and do fix all rates of transportation, limited only (at least so far as review by this Court is concerned) by the provision of the Federal Constitution against taking property without due process of law.

The findings and orders of the Commission being *prima facie* reasonable, just and valid, they will be enforced unless it is shown affirmatively by the Railway Companies that it is impossible for them to make a reasonable profit on their Florida Intra-State business. These companies have no legal right to charge rates to some places, or to some shippers or on some articles less than allowed by the Commission's Rates and make up losses so sustained by charging rates to other places, or to other shippers or on other articles in excess of the rates fixed by the Commission.

Limited only by the provisions of the Federal Constitution against taking property without due process of law, the Commission are vested with the discretion as to the distribution of the burthen of transportation charges upon the various subjects of transportation. If the entire schedule of rates, taken as a whole, will permit the Railway Company

to derive a reasonable profit from its Florida Intra-State Business upon that part of its Florida lines engaged in the business of Florida Intra-State transportation, the company must comply with the orders of the Commission.

The orders of the Commission being *prima facie* reasonable, just and valid, the Company attacking the order must show what part of its property is used for the purposes of carrying on its Florida Intra-State business, the value thereof and the cost of operation and maintenance thereof, and what has been or what will be (and this must not be speculative), the possible revenue from that business under the schedules of rates fixed by the State Commision. And that revenue must be the *actual* revenue, and not an *estimated* revenue, estimated as is attempted to be done in these cases by taking the *actual* number of tons of Florida Intra-State Freight hauled one mile, and multiplying it by the average rate received from an entire system covering several states. The average rate of freight, for instance, on all Florida Intra-State business, which includes great quantities of such extremely high grade freights as fruits, early vegetables, &c., is between three and one-half and four cents per mile, while the average rates on the whole systems, including iron ore, coal, &c., is for through and local combined, a little less than one-third the average Florida Intra-State Rate.

Evidence.

The Atlantic Coast Line presented and took the testimony of several witnesses and introduced certain reports made to and by the Florida Railroad Commission. The Seaboard Air Line offered in evidence only certain reports made to and by the Florida Railroad Commission, but swore no witnesses. The State of Florida in the Atlantic Coast Line Railroad case offered and filed in evidence the report made for the year ending June 30, 1902, of certain railroad companies which at the time of the making of this order constituted the Atlantic Coast Line Railroad Company in Florida, these reports having been called to the attention of one of the witnesses for the railroad company and he having been cross-examined with reference to them.

The witness for plaintiffs in error, W. B. Denham, Superintendent of the Second Division of the Atlantic Coast Line Railroad Company, testifies that he had been the General Superintendent of the Plant System lines, which, by consolidation, became the A. C. L. in Florida, and that under the Plant System management the accounts of the Florida lines were kept separate and distinct from the other lines of the Plant System, so that there could be ascertained the earnings, expenses, etc., of the Florida lines, but (page 48 of the record in case No. 152)

"since the consolidation the percentage of cost has not been kept separately but has been consolidated and the percentage taken on the entire Atlantic Coast Line Railway System."

In the next sentence in his testimony he states that

"the percentage of cost for the operation of the Florida properties of the Company for the fiscal year ending with June, 1904, was greater than ever before"

which shows the effect of the change in the method of bookkeeping and the consolidatiing of the cost of operation in Florida, where construction and maintenance are extremely cheap, and there are, practically speaking, no grades and the tracks are laid, practically speaking, on a level with the ground, and many of the heaviest items of expense of construction, maintenance and operation are wholly unknown, and where the tonnage per mile and number of trains run are relatively small and the passenger fares and the rates of freight on the great bulk of freight handled are very high, with the corresponding cost of the entire A. C. L.

The witness then proceeds to show the great expensiveness of handling phosphate for foreign shipments, which are not covered and cannot be affected by the orders of the Florida Railroad Commission, for the reason that phosphate rock shipped from mines within the State to ports either within or without the State, there delivered to steamships or sailing vessels for transportation to Europe, as the great bulk of phosphate shipments are shipped, are clearly not within the jurisdiction of the State Railroad Commission, which claims no jurisdiction over such shipments.

The testimony of this witness also shows that the railroad

companies, in the matter of foreign shipments of phosphate rock, give facilities for such shipments which are in themselves very expensive and charge no demurrage upon the cars, as they have a right to charge, and yet such shipments are made, as appears from the evidence of witnesses, at rates not exceeding one cent per ton per mile, whereas, it is manifest that the shipment of phosphate from the mines in the interior of the State to phosphate reduction plants where acid phosphate is extracted from the rock, can be made with vastly less expense than the shipments that are sent abroad, because of the extra expenses shown by this witness to be attendant upon the rushing of phosphate to the ports for delivery to a particular steamer, the day of arrival of which cannot be known ahead, and which must be loaded quickly to avoid steamship demurrage charges.

We respectfully call the attention of the Court to the testimony of this witness on page 48 *et seq.* of the record in case No. 152. This witness near the top of page 50 in the record, says:

"My testimony in regard to additional cost of transportation because of having to hold cars for ships was with reference to shipments from Savannah and Port Tampa going by ship."

We submit also that if the railroad company is forced to put into effect a rate on phosphate for delivery of phosphate from the mines in the interior of the State to the phosphate works at seaports of one cent per ton per mile, which is considerably more than the rate charged on foreign shipments and considerably more than the average rate credited to Florida by the S. A. L. Report, and stated by attorneys for the S. A. L. in their brief on page 6 to be .815 of one cent, the railroad companies can by enforcing demurrage charges and because of the difference in the nature of the shipments, handle the phosphate rock to the phosphate reduction works, at a large saving in the cost of transportation, and unless there is some unknown source of revenue to the railroad companies arising from the foreign shipments through favored ports and over favored lines the enforcement of the rate proposed by the Railroad Commission will, upon such shipments as are made locally, result in a much larger income and a much less expense.

The witness also testified, near the bottom of page 50, that the railroad company collects demurrage on all other freight but never charged demurrage for phosphate, and the witness is all the time testifying with reference to foreign shipments of phosphate. The witness also, on page 51, testifies that the Atlantic Coast Line Railway Company, which operates lines of railway running directly from phosphate fields to the City of Jacksonville, have in effect no rates on phosphate for transportation to Jacksonville, because they have no port to put it in.

On page 52 the testimony of Superintendent Denham contains the following :

"Q. All of your testimony with reference to transporting phosphate is based on your experience with shipments either over your line, out of the State, into Georgia or to Port Tampa, to be delivered to ships to go to foreign countries, is it not?

A. Yes, because we do not handle any other phosphate except the little that that phosphate plant at Jacksonville used to get. It got a little phosphate occasionally, but outside of that there is nothing. That was the only plant in Florida that used any phosphate. That did not take care of twenty cars per year, so practically none was handled. They have been out of business for two years.

Q. Practically no phosphate being handled, according to your opinion, except shipments either foreign or inter-State?

A. Yes."

Perhaps to enable this Court to understand the conditions as the Supreme Court of Florida, and all people in Florida know them, it is well to state that the phosphate mined in the State is all mined in the interior of the State in certain well prescribed sections. Phosphate rock as mined is worthless, except when put through a process which extracts the acid phosphate from the rock, which process is expensive and requires a large plant. Practically speaking, all of the phosphate mined in Florida is shipped out of the State, by far the greater proportion going foreign, the smaller proportion going to various phosphate reduction plants in other States. Efforts have been made and plants have been recently built at ports in the State for the utilizing of the phosphate rock. This is to some extent shown by the testimony of Superintendent Denham.

The testimony shows that the Railway Companies count in their reports all phosphate shipments, absolutely all, as foreign

or inter-State, giving the State no credit for any of the shipments.

The Supreme Court of Florida knows as all other people in Florida know, that there are plants at Jacksonville, Florida, which would, were they given the same rate, or anywheres nearly the same rate, that foreign shipments are given, use considerable quantities of phosphate rock, and yet Mr. Denham testifies that they have no rate to Jacksonville and make no shipments there.

We submit that upon their own testimony that they are not now receiving any revenue whatever from shipments of phosphate from points in Florida to points in Florida, which are amenable to the rules of the Railroad Commission, and that the rates for actual charge on foreign shipments do not exceed the rate fixed by the Commission, one cent per ton per mile, and that the cost of transportation on foreign shipments is very greatly increased because of the necessity for quickly furnishing transportation to ships to prevent their going on demurrage, and that they therefore show beyond question that the enforcement of the Railroad Commission's order cannot possibly reduce either the gross or net incomes, but must necessarily increase both the gross and net revenues of the railroad company, unless the railroad companies are getting some unknown and illegal revenues from foreign shipments.

While considering the testimony of Mr. Denham, we suggest that he shows the absolute unreliableness of the reports made by the railroads to the Railroad Commission, not only by his testimony heretofore noted, to the effect that they do not now keep the accounts of the Florida Division separate from the other Divisions of the road, but also by his statement at the bottom of page 52 and top of page 53, and by the showing of the railroad reports on the top of page 53, to which his attention was called, and which were introduced in evidence.

He had testified, as did Mr. McIver, that the business done by the Coast Line in Florida was considerably better than the business done by the Plant System over the same lines the year before, and (top of page 53),

"witness was shown reports to the Florida Railroad Commission made by the Plant System of Railroads to June 30, 1902,

and by the Atlantic Coast Line System to June 30, 1903. His attention was called to the fact that the Plant System report showed $4,150,481.26 gross earnings from operation of lines in Florida for year ending June 30, 1902, and that the Atlantic Coast Line report showed total gross earnings from operation of same lines in Florida for year ending June 30, 1903, only $3,331,967.16".

"Q. You have testified that the business done by the Atlantic Coast Line for the year ending June 30, 1903, over its Florida Lines was considerably better than the business done by the Plant System over the same lines the year before. Will you explain how it is that the Atlantic Coast Line reports more than $818,000 less gross earnings when they did a considerably better business?

A. I can explain that. You have not Georgia and North Carolina which means a great deal more than that.

Q. This is for Florida?

A. I told you that up to July, 1902, our earnings in Florida and expenses were kept separate and they were operated as one railroad. If you take the expenses of Georgia and North Carolina and put Florida with it the expenses decrease on that ratio.

Q. Is not that a report of the lines in Florida?

A. Report arrived at in that way.

Q. What is the percentage reported for 1903 in Florida?

A. That report is correct if it comes from our people. It is arrived at—the earnings by taking the mileage of Florida as earning the same money as Georgia or North Carolina, which is not the case by any means."

As further showing the unreliability of their reports, and of all figures presented by them, Superintendent Denham, at the bottom of page 53, shows that according to their style of bookkeeping the entire cost of relaying with heavier rails the entire line in Florida and the entire cost of new rolling stock purchased, perhaps for years to come, may be charged up in one year's operating account.

"Q. From your experience would you not say that the percentage of expense to earnings in 1904 will show less than for 1903?

A. I will not say certain because sometimes our expenses fluctuate. It depends on how many cars and engines you have to buy. Railroads don't last always, you know, and you have to buy cars and railroad iron to put back on it and when you buy a foot of railroad iron it costs one dollar for every foot you put down. Our railroads are twenty or twenty-five years old and we have to relay them if we are to operate them. Cars wear out and engines wear out".

We suggest that if the evidence of this witness, on page 54, be true, which we do not believe would be the case on a proper system of accounting, because of the extremely high rates charged on those lines, the Coast Line cannot acquire the right, by the purchase of unprofitable lines like the St. Johns and Lake Eustis and other roads are alleged to be, to refuse to put into effect any rates whatever for the transportation of phosphate from the interior of Florida to phosphate reduction plants at Jacksonville and other ports.

R. S. McKeever, witness for plaintiff in error, testified (page 56, record number 152), that he was auditor of freight receipts under the Plant System, and is now auditor of freight receipts for the Atlantic Coast Line, and says:

"the freight earnings of the Atlantic Coast Line Railway Company for Florida's intra-State business for the year ending June 30, 1904, was $871,926.41."

At the bottom of page 56 he says, explaining the wonderful system of bookkeeping under which his reports are made out:

"receipts are allotted to Florida lines on the basis of tons per mile of the entire Atlantic Coast Line System. The amount of freight receipts allotted to Florida does not report the actual receipts for hauling freight in Florida, but is arrived at by taking the total number of tons of freight hauled one mile on the entire Atlantic Coast Line System in Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama, and the entire freight receipts for the entire System for the year, and thereby ascertaining the average rate per ton for hauling one mile all freight hauled on the System. We then take the actual number of tons of freight handled one mile in Florida, and multiply that by the average rate received by the System and allot the amount so arrived at to the Florida Lines as their earnings. This is the basis on which all of our statements are made. We have some income from mail service but I do not know what it is. No other sources of income are taken into consideration. We treat all phosphate shipments through Port Tampa as intra-State and they are not included in these figures nor are any phosphate shipments included."

On page 859 of the record (No. 152) we find Mr. McKeever, the auditor of freight receipts and the official who makes out all reports to the Florida Railroad Commission, again shows the utter unreliability for the purpose of ascertaining actual receipts and expenditures in Florida of the reports made by

the railroad companies to the Railroad Commission, and also of all the testimony submitted, by explaining the basis on which their figures are made as follows:

"The raising and lowering of rates on phosphate in Florida to Port Tampa affects the receipts of the Virginia Lines just as much as the Florida Lines, according to our method of division, and the raising and lowering of rates in North Carolina affects just as much the per ton per mile the credit given to Florida as to North Carolina. It would be the same if we hauled oranges at so much per ton per mile."

That is to say, that, according to the system of bookkeeping maintained by the railway companies from which the reports to the Railroad Commission are made, and upon which the testimony is all based, the fact that the average rate of freight in Florida is several times the average rate of freight in Virginia and Alabama and very much greater than the average rate of freight in any other State in the Union is utterly ignored and the Florida lines are given credit at no higher rate per ton per mile than other railroads, and Florida is given the same credit for hauling one ton of oranges one mile at four or five cents per ton as is given to Alabama for hauling a ton of iron ore at one-half cent per ton. That is to say, that in Florida where the tonnage is relatively small, and the rate averages a little more than three and one-half cents per ton per mile, including the high class articles such as fruits, vegetables and early truck gardening products, the receipts are arrived at by taking the actual tonnage, which is small and multiplying it by the average rate on the entire System which average rate is fixed to a very great degree by a very cheap rate of hauling iron ore and coal in Alabama and Virginia at less than one-half cent per ton per mile in many instances.

In this way the *actual* rate of over three and one-half cents per ton per mile on Florida Intra-State freight is reduced in the S. A. L. Report, cited by their attorneys on page 6, to .815 of one cent per ton. And yet this Court is asked to reverse the finding of fact of the Supreme Court of Florida upon only such evidence. The reports made to the Railroad Commission presented by the State of Florida in the Court below were presented because they had been shown to witnesses who had been interrogated about them and to show the fact that notwithstanding the witnesses of the railway company had testified that the

business done by the Atlantic Coast Line over the Florida lines was considerably greater than the business done by the Plant System over the same lines the preceding year, these reports made out by the witness McIver, himself, show that under the system of bookkeeping maintained by the Atlantic Coast Line the estimated earnings were made to appear very greatly reduced, below the actual earnings shown by the Plant System.

The testimony of the witnesses presented by the Atlantic Coast Line Railroad Company having shown so clearly the fact that the reports made to the Railroad Commission were worthless as evidence of actual receipts and expenditures in Florida, and that their method of bookkeeping was such that the railroad officers could not testify as to the actual receipts and expenditures in Florida or in fact throw any light upon the real conditions; the Seaboard Air Line called no witnesses whatever, contenting themselves with offering in evidence the report of the said Seaboard Air Line Railway to the Railroad Commission of the State of Florida for the year ending June 20, 1904, which report it was the duty of the railroad company to file, and the filing in evidence of which was permitted only to show that the railway company had complied with that obligation and that the Railroad Commission had that report before it. It certainly cannot be taken without swearing any witnesses as proving the truth of everything found in those reports or as showing the system used in arriving at the statements therein contained. In fact reports being before the Railroad Commission at the time of their action and the findings of the Commission being *prima facie* correct, reasonable, just and legal, we do not think that such a report can be made the basis of a reversal of the decision of the Supreme Court of Florida in this case any more than can the fact, even if proven as set up in the report to the Florida Railroad Commission showing previous reductions in freight and passenger rates, be taken as proving that this action was unreasonable.

We submit that the suggestion that previous reductions

had been made and not fought by the railroads and the fact that during the eight years and more of existence of the Florida Railroad Commission, this is the first time that its findings have been brought before this Court, is rather an indication of the fact that the Florida Railroad Commission is a very conservative body. We are forced to take the other intimations to the effect that the Seaboard Air Line Railway considers the Florida Railroad Commission as a kind of Populistic body, regardless of the interests of railroad owners, about as seriously as we do the suggestion in the brief that the object of the Commission in making the phosphate rate was the cheapening of phosphate to Florida farmers.

In conclusion we submit that there is no evidence that the enforcement of the order will in any way reduce the revenues of the railroad companies in any of the cases, as the simple refusal of the railroad company to obey an order of the Railroad Commission can hardly be taken as such evidence and we have the positive testimony of witnesses presented by the Atlantic Coast Line Railway Company that there are now no shipments of phosphate which are covered by the Railroad Commissions orders. And this proposition was urged time and again by counsel for plaintiffs in error in the Court below as reasons why the order should not be enforced, but the Court held, and properly, that the Commission had a right to require putting into effect of a rate if no rate existed and if necessary to even anticipate business or to make possible business, as, of course, the construction of phosphate reduction plants would necessarily be greatly discouraged by the fact that the railroad companies before had refused to make rates. There is not only no evidence that there will be any shipments of phosphate, under the order of the Railroad Commission over any short distances as for instance five or ten miles or twenty miles, or any other small distance, and in fact the very conditions in Florida would prevent such shipments because of the fact that phosphate is mined in the interior and can be used only by phosphate reduction plants, which must necessarily be located at ports where certain other materials can be gotten together to utilize phosphate rock.

In the West Shore case we submit that the rule is an entirely reasonable one and regardless of profits or expenses of the railways it is entirely reasonable and just that a rule shall be enforced which prohibits a railway company from dividing itself up into a whole lot of little lines and from charging a half dozen local rates in a short distance.

Respectfully submitted,

J. M. BARRS,

Attorney for Defendant in Error.

FILE COPY.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1905.

Office Supreme Court U. S.
FILED
MAR 9 1906
JAMES H. MCKENNEY, Clerk.

SEABOARD AIR LINE RAILWAY,
Plaintiff in Error,

v.

THE STATE OF FLORIDA, Etc.,
Defendant in Error.

Nos. [redacted] 10 and [redacted] 11.

THE ATLANTIC COAST LINE RAILWAY COMPANY,
Plaintiff in Error,

v.

THE STATE OF FLORIDA, Etc.,
Defendant in Error.

No. [redacted] 9.

BRIEF FOR DEFENDANT

Filed by Leave of Court.

J. M. BARRS, Special Counsel,
Attorney for Defendant.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1905.

SEABOARD AIR LINE RAILWAY, Plaintiff-in-Error, vs. THE STATE OF FLORIDA, upon the relation of W. H. ELLIS, as Attorney-General, *et al.*	Nos. 155 and 156.
THE ATLANTIC COAST LINE RAILWAY COMPANY, Plaintiff-in-Error, vs. THE STATE OF FLORIDA, upon the relation of W. H. ELLIS, as Attorney-General, *et al.*	No. 152.

BRIEF FOR DEFENDANT IN ERROR.

Filed by Leave of Court.

The defendant in error, under the authority to file an additional brief, in reply to the proposition advanced by counsel for the Seaboard Air Line in the concluding argument, that the rate of one cent per ton per mile on phosphate rock, being made in an order which also pro-

vided that existing rates are not raised where the rate is now less than one cent per ton per mile, is, because of that fact, unreasonable and invalid, we suggest that this fact does not argue even any unreasonableness of the order, for the reason that the "pebble phosphate", which is worth even less than "hard-rock phosphate," must, in some instances, be carried a considerable distance, and that a rate of one cent per ton per mile would be on that material absolutely prohibitory to places where it can be utilized, and the railroad companies, recognizing this fact, have themselves made lower rates on "pebble phosphate" on longer hauls.

As to the suggestion that it allows the charging of a less rate to one person than to another person, we reply that the rules of the Railroad Commission, and the Acts of the Legislature prohibit discrimination of that kind.

We also suggest that the Florida Railroad Commission is constantly in session from day to day, and that if any hardship shall be discovered in the workings of the rule, the Commission has power, and will be presumed to stand ready to exercise the power, of modifying its rules and orders, with the consent of the railway company, without notice to any one else.

To make clear the contention in our oral argument that receipts from phosphate freights are not to be reduced by the order, we submit that on page 73 of the record, in case No. 156, Item No. 17, "average receipts per ton per mile" on "traffic and mileage statistics State of Florida", is given as: .00815, which is less than the phosphate rate allowed,—and the sworn returns to the alternative writ of mandamus found on pages 22 and 23 of the Record in No. 156 and on pages 26 and 27 of

the Record in No. 152, show that present rates, if any, do not exceed the rates allowed in the order. The testimony of Denham and McIver in No. 156 shows that all phosphate freight is foreign or inter-State.

We also submit that there is, at least, no evidence to show that the Seaboard Air Line does not use the same method of making out accounts that is used by the Atlantic Coast Line, shown in the testimony of the officers of the Atlantic Coast Line in the record of case No. 152. At any rate, there is an absolute undisputed lack of testimony as to the local or intra-State rate on any commodity in case No. 156, or in No. 152. The rate as shown by the rate sheet on page 8 of the record in No. 155 is a very high one, but there are no phosphate shipments over the West Shore branch of the S. A. L.

There is also an absolute undisputed lack of evidence of any kind as to the amount of local business done, or the profitableness or unprofitableness of the local business done as distinguished from the inter-State or foreign shipments.

Again, the only evidence as to the valuation of the railroad property is on the basis of amount of stock acquired to give control without any evidence as to the price paid for or the real value of the stock.

Under the head of costs of road equipment and terminal improvements on page 56 of the record, in case No. 156, we find as one of the items of cost of the Railroad and equipment the following "Item 26", "Treasury stock bonus to subscribers of $5,000,000. bonds $12,500,000." "cost per mile $4,893.80".

As we understand this statement, patrons of the Seaboard Air Line are to be expected to pay a revenue on a valuation of $4,893.80 per mile because the Seaboard Air Line Management saw fit to give a bonus of $12,500,000. to purchasers of only $5,000,000. of bonds. And again, we find in the next item $12,086.90 costs per mile, upon which they are expected to pay a revenue, is covered in the item "acquired by control of stock", without giving us any information whatever as to the cost of acquiring control of stock, or the value of the stock, or any other information on the subject. And on page 57 we find another item of $894.95 per mile accounted for by "acquired control of stock".

We do not mean by this to say that the Seaboard Air Line Railway did not cost anything, but we do submit that there is no evidence as to what it did cost presented in any such way as would warrant this court in reversing the Supreme Court of Florida on a question of fact and overcoming the prima facie reasonableness of the order of the Railroad Commission.

For the further purpose of showing the elements going to make up the assets of the Seabord Air Line, according to this report, which is the only basis of the appeal to this court, we ask the attention of the court to pages 62 and 63 of the record n case No. 156. On page 62 we find that the Seaboard Air Line Railway, in addition to its *railway and tangible property*, owns railway stocks of the total par value of $46,028,189.53, which produce an "income or dividend received" of only $17,800.00. and which the report estimates as the true valuation, $65,269,144.35. This company owns "other stocks" of total valuation of $868,000.00, which produced "income or dividend received $12,600.00" and

valued at $1,312,038.50. And page 63 shows "Bonds owned-Railway Bonds", "Total par value $5,828,810.-00", on which they received "income or interest received $9,875.00", which is valued in the report at $5,278,534.-23"; and the company also owns "other bonds" amounting to $50,000.00, and they own "one-third interest in $14,000.00 Florida Publishing Company six per cent bonds, on which they receive an income or interest of $280.00, which they value at $800.00. We submit this page is interesting, in this, that, with the grand total par value of bonds of $5,878,810.00 and the total income or interest received on account of those bonds aggregating only $10,155.00, the company's valuation of the same is $5,329,334.23, and the fact being that, according to their showing, the only two bond items on which they received any income or interest whatever are two Florida properties, one of them the Florida West Shore Railway, total par value $395,000.00, paying $9,875.00, being valued considerably below par, and the Florida Publishing Company bonds, which pays the remainder of the entire income received, is valued far below par, while most of the other bonds, which are paying no income or interest, are valued at par, and the "Oxford and Coast Line" first mortgage bonds "$25,-000.00", which has paid no income or interest, is valued at $54,359.36.

We will not take up the Court's time with more details, as scarcely a page of the report can be examined critically without showing that the report is not to be taken seriously in any way.

As absolutely settling case No. 155, the Florida West Shore Branch case, enforcing the Commission's Rule against more than one local rate on a single line, we submis that this branch is not included in any way whatever in the S. A. L. Report offered in evidence, and there is absolutely no evidence of any existing rate, or cost or value of that branch or the business done or any reference whatever to the Florida Wset Shore branch.

The Record in that case pages 57, 58, and 59, give all the roads operated and the Florida West Shore is not found there or elsewhere, that w ecan find.

Respectfully submitted,

J. M. BARRS,

Attorney for Defendant in Error.

Supreme Court of the United States.

No. 9.—October Term, 1906.

The Atlantic Coast Line Railroad Company, Plaintiff in Error, *vs.* The State of Florida upon the Relation of W. H. Ellis, as Attorney General of said State, and J. M. Barrs, as Special Counsel for Jefferson B. Browne et al., Railroad Commissioners of said State.	In error to the Supreme Court of the State of Florida.

[December 3, 1906.]

On December 17, 1903, the Railroad Commission of the State of Florida, after notice and a hearing, made an order:

"That the rate to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida, for the transportation of phosphate from points in the State to points within the State, shall not exceed one cent per ton per mile.

"Provided, however, that where the rate of one cent per ton per mile will raise any rate now in operation, that said rate of one cent per ton per mile shall not be effective, but the rate as now charged by the railroad companies is hereby adopted by the Railroad Commissioners as their rate between such points.

"It is therefore ordered, that where a shipment of phosphate shall pass over two or more railroads in reaching its destination within the State of Florida, the initial line may charge one and a half cents per ton per mile for the first ten miles which said phosphate shall be hauled."

The railroad company in error, which was a party to the proceedings before the commission, not complying with this order, application was made on March 7, 1904, to the Supreme Court of the State for a writ of mandamus to compel compliance, and on October 19, 1904, the peremptory writ was ordered by that court, as prayed for. 48 Fla. 146. Thereupon the railroad company sued out this writ of error.

No special findings of fact were made by the Supreme Court, but in its opinion it said:

"There is a total lack of positive proof that the commission rate is materially less than that now charged. The company proves merely that its books do not show that any local phosphate had been carried by it, but does not show what rate it charges on the interstate shipments of phosphate. There is some showing of the expensiveness of handling phosphate for foreign shipments, much of which would not enter into the local or intrastate business, should such be carried, but nothing is shown from which this court can say that the rate fixed by the commission is unreasonable. The

evidence offered might tend to show that the rate is unnecessary or that it is speculative, but such questions the court is not called upon to decide.

* * * * * *

"Taking the figures from the brief filed by the respondent, we find that the local business alone produces a net earning of at least 3 % on the total value of the road in Florida, charging against such income the whole of the taxes. While a State is not permitted to offset local business against interstate business, and to justify low local rates by reason of the profitableness of the latter, yet the interstate and foreign business may and should be considered in determining the proportion of the value of the property of the company assignable to local business. There is no proper showing of the interstate and foreign business, so that we may determine on what fraction of the whole value of the property in Florida the company might be entitled to earn an income from local business; there is, however, a showing that the interstate and foreign business is large and, on a proper showing and a proper proportioning of the service between domestic and foreign business, this percentage of net income would be largely increased.

* * * * * *

"Under the burden of proof cast by the law upon the respondent we find that the rate in question is not unreasonable."

Mr. Justice BREWER delivered the opinion of the Court.

Passing all matters of a local nature, in respect to which the decision of the State court is final, the Federal question is whether the order of the Railroad Commission, sustained by the Supreme Court of the State, deprived the company of its property without due process of law or denied to it the equal protection of the law. The testimony taken before the commission was not preserved, but by the law of the State the rates established by such commission are to be taken in all courts as *prima facie* just and reasonable. Laws Florida, 1899, pp. 76, 82, Chap. 4700, Sec. 8. We start, therefore, with the presumption in favor of the order.

The testimony on the hearing of the application in the Supreme Court is, however, in the record. That court, in the exercise of its original jurisdiction of mandamus cases, determines questions of fact as well as of law. *State ex rel.* v. *County Commissioners of Suwannee County*, 21 Fla. 1. While it did not make any distinct findings of fact, yet its deductions from the testimony are clearly indicated by the quotations from its opinion. If it be said that in the absence of special findings of fact it is the duty of this court to examine the testimony upon which the judgment was entered, it is very clear that there was no sufficient evidence presented to that court to justify a refusal to enforce the order of the Railroad Commission.

And here we face this situation: The order of the commission was not operative upon all local rates but only fixed the rate on a single article,

to wit, phosphate. There is no evidence of the amount of phosphates carried locally; neither is it shown how much a change in the rate of carrying them will affect the income, nor how much the rate fixed by the railroads for carrying phosphate has been changed by the order of the commission. There is testimony tending to show the gross income from all local freights and the value of the railroad property, and also certain difficulties in the way of transporting phosphates owing to the lack of facilities at the terminals. But there is nothing from which we can determine the cost of such transportation. We are aware of the difficulty which attends proof of the cost of transporting a single article, and in order to determine the reasonableness of a rate prescribed it may sometimes be necessary to accept as a basis the average rate of all transportation per ton per mile. We shall not attempt to indicate to what extent or in what cases the inquiry must be special and limited. It is enough for the present to hold that there is in the record nothing from which a reasonable deduction can be made as to the cost of transportation, the amount of phosphates transported, or the effect which the rate established by the commission will have upon the income. Under these circumstances it is impossible to hold that there was error in the conclusions reached by the Supreme Court of the State of Florida, and its judgment is

Affirmed.

True copy.

Test:

Clerk Supreme Court U. S.